(18,990.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 339.

HENNING JACOBSON, PLAINTIFF IN ERROR,

vs.

THE COMMONWEALTH OF MASSACHUSETTS.

IN ERROR TO THE SUPERIOR COURT OF THE STATE OF MASSACHUSETTS.

INDEX.

	Original.	Print.
Writ of error	1	1
Return on writ of error	2	2
Record in third district court	3	2
Complaint	3	2
Plea of not guilty	4	3
Judgment	4	3
Appeal and order for recognizance	4	3
Recognizance	6	3
Hearing on appeal, &c	8	5
Defendant's exceptions	9	5
Statement of the case	9	5
Defendant's offers	10	6
Ruling on offers of defendant	12	7
Defendant's requests for instructions	12	7
Ruling on requests for instructions	14	8
Prayer for allowance of exceptions	15	9
Judge's allowance of exceptions	15	9
Exhibit A—Complaint	15	9
B—Order of board of health, February 27, 1902	16	10
C—Order of board of health, March 19, 1902	16	10

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 13, 1903.

	Original.	Print
Rescript from supreme judicial court	19	11
Brief statement and grounds of decision	19	11
Judgment	19	11
Writ of error granted, &c	19	11
Petition for writ of error	20	11
Bond to appear and abide final judgment	24	13
Bond on writ of error	26	14
Docket record	28	15
Certified copy of opinion of supreme judicial court	30	15
Clerk's certificate	37	19
Citation	38	20
Acceptance of service of citation	39	20
Assignment or errors	40	21
Prayer for reversal	43	22

1 UNITED STATES OF AMERICA, *ss:*

[Seal of the Circuit Court, Massachusetts.]

The President of the United States to the honorable the judges of the superior court of the Commonwealth of Massachusetts, holden at Cambridge, within and for the county of Middlesex, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said superior court before you, or some of you, being the highest court of law or equity of the State of Massachusetts in which a decision could be had in the suit between The Commonwealth of Massachusetts, by complaint, plaintiff and Henning Jacobson defendant, in a plea of not guilty wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity, or wherein was drawn in question the validity of a statute of, or authority exercised under, said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Henning Jacobson as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the fifteenth day of June in the year of our Lord one thousand nine hundred and three.

ALEX. H. TROWBRIDGE,
Clerk of the Circuit Court of the United States,
District of Massachusetts.
By BENJ. H. BRADLEE, *Deputy Clerk.*

Allowed by
ALBERT MASON,
Chief Justice Superior Court.

[Endorsed:] 50. Commonwealth *vs.* Jacobson. Writ of error. Filed June 15, 1903.

2 COMMONWEALTH OF MASSACHUSETTS, *Middlesex*, } *ss:*

And now, here, the judges of the superior court make return of this writ by annexing hereto and sending herewith, under the seal of the said superior court, a true and attested copy of the record and proceedings in the suit within mentioned, with all things concerning the same, to the Supreme Court of the United States, as within commanded.

Seal the Superior Court.

In testimony whereof, I Theodore C. Hurd clerk of said superior court, have hereto set my hand and the seal of said court this twenty-third day of June A. D. 1903.

THEO. C. HURD, *Clerk.*

3 COMMONWEALTH OF MASSACHUSETTS:

At the third district court of Eastern Middlesex, in the county of Middlesex, holden in Cambridge, in said county, on the twenty-third day of July in the year of our Lord one thousand nine hundred and two Samuel W. McDaniel Esquire, special justice of said court, present and holding the court.

Henning Jacobson is brought before said court in due form of law, to answer to the Commonwealth of Massachusetts, on a complaint, a true copy of which said complaint is as follows, to wit:—

COMMONWEALTH OF MASSACHUSETTS, *Middlesex*, } *To wit:*

To the third district court of Eastern Middlesex, holden at Cambridge for the transaction of criminal business, within the county of Middlesex:

E. Edwin Spencer of Cambridge in said county, in behalf of the Commonwealth of Massachusetts, on the seventeenth day of July in the year of our Lord one thousand nine hundred and two on oath complains that the board of health of the city of Cambridge in said county, being of the opinion that it was necessary for the public health and safety, did require the vaccination and revaccination of all the inhabitants thereof who had not been successfully vaccinated since the first day of March in the year of our Lord one thousand eight hundred and ninety-seven, and did provide them with the means of free vaccination and that Henning Jacobson being over twenty-one years of age and not under guardianship, did refuse and neglect to comply with such requirement.

E. EDWIN SPENCER.

MIDDLESEX, *ss:*

Received and sworn to, on said day, before said court.
HERBERT J. SPLAINE,
Assistant Clerk.

4 Which complaint being read to and heard by the said respondent he is asked by the court whether he is guilty or not guilty of the offence charged against him in the said complaint, who pleads and says that he is not guilty.

After hearing the witnesses in the case duly sworn, and fully hearing and understanding the defence of the said defendant, it appears to the court that he is guilty of the offence aforesaid.

It is therefore considered and ordered by the court, that the said respondent for the offence aforesaid, forfeit and pay a fine of five dollars to the use of said Cambridge and that he stand committed until sentence be performed.

From this judgment and sentence the said Jacobson appeals to the superior court, for the transaction of criminal business, next to be holden at Cambridge, within and for said county of Middlesex, on the first Monday in August next, and is ordered to recognize in the sum of two hundred dollars, with surety to appear at said superior court, and there prosecute his appeal, and abide the order and sentence of the court thereon, and also in like manner personally to appear at any subsequent term of said superior court, to which the proceedings in the premises may be continued, if not previously surrendered and discharged, and so from term to term, until the final decree, sentence or order of said superior court thereon, and to abide such final sentence, order, or decree of said superior court, and not depart without leave, and in the meantime to keep the peace and be of good behavior, and stand committed until he so recognize.

5 And thereupon the said Jacobson as principal, before said third district court of Eastern Middlesex, with George A. Giles as surety recognized according to the said order.

Attest: —— ——, *Clerk.*

A true copy of record—
Attest, my hand and the seal of said third district court of Eastern Middlesex.
[L. S.] —— ——, *Clerk.*

6 *Recognizance of Respondent.*

COMMONWEALTH OF MASSACHUSETTS, *Middlesex,* } *ss:*

Third District Court of Eastern Middlesex.

[L. S.]

MEMORANDUM.—That on the twenty-third day of July in the year of our Lord one thousand nine hundred and two Henning Jacobson

with George A. Giles, 67 Austin St. Cambridge Mass., personally appeared before the third district court of Eastern Middlesex, within and for the county of Middlesex, and acknowledged themselves to be severally indebted to the Commonwealth of Massachusetts, in the sums following, to wit: the said Jacobson as principal in the sum of two hundred dollars, and the said Giles as surety in the sum of two hundred dollars, to be levied on their goods, chattels, lands or tenements, and in want thereof, upon their bodies, to the use of the said Commonwealth, if default be made in the performance of the condition following:

The condition of this recognizance is such that whereas the said Jacobson is now before our said district court, in due form of law, to answer to the Commonwealth of Massachusetts, on the complaint under oath of E. E. Spencer charging said respondent with the crime of refusing vaccination.

Which complaint being read in open court, the said respondent is asked by the court whether he is guilty or not guilty of the offence charged in said complaint; who pleads and says that he is not guilty. But, after due examination and hearing the defence of said respondent, it thereupon appearing to said court that the said re-
7 spondent is guilty of the offence aforesaid, it is considered and ordered by the court that the said respondent forfeit and pay a fine of five dollars, and that he stand committed until this sentence be performed. From which said judgment the said respondent appeals to the superior court next to be holden at Cambridge, within and for the county of Middlesex, on the first Monday of August next; and it is ordered by said district court that the said respondent recognize in the sum of two hundred dollars, with sufficient surety in the like sum, to appear at the court appealed to, and prosecute his appeal and abide the sentence of the court thereon; and in like manner personally to appear at any subsequent term of said court, to which proceedings in the premises may be continued if not previously surrendered or discharged; and so from term to term until the final decree, sentence or order of the court thereon; and to abide such final sentence, order or decree of the court, and not depart without leave; and, in the meantime, to keep the peace and be of good behavior.

Now, therefore, if the said respondent shall appear at the court appealed to, and there prosecute his appeal, and abide the sentence of the court thereon; and in like manner personally appear at any subsequent term of said court to which the same may be continued, and so from term to term until the final decree, sentence or order of the court thereon, and shall abide such final sentence, order or decree, and not depart without leave, and, in the meantime, shall keep the peace and be of good behavior, then this recognizance shall be void, otherwise in full force.

Attest:

____ ____,

Clerk of the Third District Court of Eastern Middlesex.

8 Said appeal was entered in said superior court on the first Monday of August, A. D. 1902, when and where said defendant Jacobson duly appeared by J. W. Pickering, his attorney. Thence said case was continued to the February sitting A. D. 1903, to wit, February twenty-seventh, A. D. 1903, when and where said defendant Jacobson appeared and for trial thereof put himself upon the country. A jury was thereupon empanelled and sworn to try the issue, viz:—Francis Bellew, foreman, appointed by the court, and fellows, to wit:—Michael Casey, Junior, Ernest M. Dean, William D. Erskine, Philip A. Goodrich, Henry E. Hunt, Louis Locke, Peter McGrath, Henry W. Ripley, Roger Sherman, Andrew F. Smith, and Alexander M. Upham, who after hearing all matters and things concerning the same returned their verdict therein and upon their oath said that said Henning Jacobson was guilty. Thereupon on the second day of March, A. D. 1903, said defendant, by his attorneys, alleged sundry exceptions to the rulings and opinions of the court in certain matters of law, as follows to wit:—

9 COMMONWEALTH OF MASSACHUSETTS, *Middlesex*, } *ss.*:

Superior Court, February Sitting, 1903.

COMMONWEALTH. }
vs.
HENNING JACOBSON. }

Defendant's Exceptions.

Complaint under section 137 of R. L., chapter 75, brought to this court by appeal from the third district court of Eastern Middlesex, where the defendant pleaded not guilty, and on trial was found guilty and sentenced to pay a fine of five dollars.

A copy of the complaint is hereto annexed, marked "A," and made a part of this bill of exceptions; and a copy of the record of proceedings may be referred to.

In this court, the defendant being arraigned, pleaded not guilty, and was se-t to the bar to be tried.

The Government put in evidence the record of a vote of the board of health of the city of Cambridge, passed February 27, 1902, a copy whereof is hereto annexed, marked "B," and made part hereof; also, the record of a vote of the board of health passed March 19, 1902, a copy of which, so far as material, is hereto annexed, marked "C," and made part hereof; also, evidence tending to show that

10 E. Edwin Spencer, then the chairman of said board of health, on or about the fifteenth day of March, 1902, called upon the defendant and informed him that if he refused to be vaccinated he would incur the penalty of five dollars provided by the vaccination law, and would be prosecuted therefor, and then and there offered to vaccinate defendant without any expense to him; but that the defendant then and there absolutely refused to be vaccinated.

This was all the evidence offered by the prosecution.

The defendant then offered to prove and show, by competent evidence, the following facts:

1. That vaccination, as usually performed, is an operation that quite often causes or results in a serious and permanent injury to the health of the person vaccinated.

2. Also, that it is an operation which occasionally causes and results in the death of the vaccinated person.

3. That among the diseases that are caused, or often result from vaccination, are eczema, salt rheum, erysipelas, syphilis, some forms of scrofula, paralysis, consumption, tetanus, and various forms of blood poisoning, including septicæmia and pyæmia, and some forms of insanity—all loathsome and dangerous diseases, to be dreaded and feared.

4. That it is impossible to tell in any particular case, what the results of vaccination will be, whether or not it will cause serious injury to the health, or result in the death of the vaccinated person.

5. That, as a rule, vaccination of a person results in a sickness more or less prolonged and serious, which renders the person vaccinated incapable of performing his usual duties and labors, whether physical or mental, for a longer or shorter time—sometimes incapacitating him for a period of several weeks, or even months—and this in cases where there is an ultimate complete recovery from the effects of the vaccination itself.

11 6. That it is a fact that quite often a person's blood is in such a condition of impurity, that it is not prudent or safe to vaccinate him while in that condition, and that it cannot be done at such a time without a risk or danger to his health or life.

7. Also, that there is no practical test by which it can be determined with any degree of certainty, when a person's blood is in such a condition of impurity as to render vaccination at such a time necessarily unsafe or dangerous.

8. That the so-called virus, or vaccine matter, or points, that is used for the purpose of vaccination, as manufactured and sold for use, quite often is impure and in a condition unfit and dangerous to be so used, and that there is no known practical test that can be resorted to by the ordinarily skillful and experienced practising physician, to determine whether or not the vaccine matter that is to be used, is pure and suitable to be used, or is by reason of its impurity, necessarily a source of danger if used at all.

9. That vaccination consists in inoculating the human system with a specific disease, known as cowpox, by means of the insertion into the human body—by incision and absorption—of various kinds of virus, commonly known as matter or pus, generally obtained from cowpox sores upon the bodies of calves (sometimes other animals) which have been infected with this disease for the purpose of generating this virus, pus or matter.

10. That numerous evil and dangerous effects are commonly produced upon human beings who are thus inoculated, by causing diseased conditions and diseases, including tetanus, or lockjaw, ulcers,

boils, eczema, erysipelas, abscesses, various forms of blood-poisoning, including septicæmia and pyæmia, and consumption, paralysis and syphilis.

11. That the nature of cowpox itself is not analagous to smallpox, but to greatpox, or syphilis, whence the syphilitic nature of the sores and symptoms of the sores produced.

12 12. That vaccination does not prevent the spread or contagion of smallpox; that the claim in behalf of vaccination that it is the only effectual or reliable safeguard or protection against smallpox, has never been demonstrated, for the reason that sanitation, isolation and disinfection have for a long time been developed and used to such an extent in connection with vaccination that it is impossible to ascribe the restrictive results accruing from the joint use of all these agencies to vaccination alone, and that in fact all the beneficial results in combating smallpox are fairly attributable to the other agencies above mentioned, and in no part to vaccination; that on the contrary, vaccination is a positive means of disseminating and spreading smallpox in the community.

13. That this defendant refused to submit to vaccination for the reason that he had, when a child, been caused great and extreme suffering, for a long period, by a disease produced by his vaccination at that time.

14. That he had witnessed a similar result of vaccination in the case of his own son, and had personally known a great number of other instances of the same kind, and that his said refusal was prompted by his knowledge of the danger and his dread of the terrible consequences of vaccination.

But the court ruled that each and all of the facts so offered to be proved by defendant were immaterial, and excluded each and all of them, and all of the evidence thus offered.

No further evidence was offered in the case.

Thereupon, the defendant asked the court to rule and instruct the jury as follows:

"That section 137 of chapter 75 of the Revised Laws is unconstitutional and void, and the refusal by defendant to comply with the requirements of the board of health here in evidence, constituted no offence, because:

"1. Said section is in derogation of the rights secured to the
13 defendant by the preamble to the Constitution of the United States, and tends to subvert and defeat the purposes of said Constitution, as there declared.

"2. Said section violates and infringes the rights secured to the defendant by article V. of the amendments of the Constitution of the United States; and especially the last clause of said article V., which reads as follows: 'Nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use without just compensation.'

"3. Said section is in derogation of the rights secured to the defendant by article XIV. of the amendments of the Constitution of the

United States, and especially the last three clauses of section 1 of said article XIV., as follows: 'No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the usual protection of the laws.'

"4. Said section is repugnant to the spirit of the Constitution of the United States.

"5. Said section, and the several provisions thereof, are repugnant and contrary to the constitution of this Commonwealth, and especially to the provisions of article I. of part the first of said constitution.

"6. Said section, and the several provisions thereof, are repugnant and contrary to the constitution of this Commonwealth, and in derogation of the rights of this defendant secured to him by article IV. of chapter 1 of part the second of said constitution, and especially of that part of it which reads as follows: 'Art. IV. And further, full power and authority are hereby given and granted to the said general court, from time to time to make, obtain and establish, all manner of wholesome and reasonable orders, laws, statutes and ordinances, directions and instructions, either with penalties or
14 without; so as the same be not repugnant or contrary to this constitution, as they shall judge to be for the good and welfare of this Commonwealth, and for the government or ordering thereof, and of the subjects of the same.'

"7. Said section, and the several provisions thereof, are repugnant and contrary to the constitution of this Commonwealth, and especially to the provisions of article X. of part the first of said constitution.

"8. Said section, and the several provisions thereof, are repugnant and contrary to the constitution of this Commonwealth, and especially to the provisions of article XIV. of part the first of said constitution.

"9. Said section, and the several provisions thereof, are wholly repugnant and contrary to the constitution of this Commonwealth, and to the spirit of said constitution.

"10. That the regulation or order adopted by the board of health, under which this prosecution is brought, is, by its terms, unreasonable, and therefore void; and creates no offence of which the defendant is or can be guilty.

"11. That said regulation or order is more especially unreasonable in this, that it requires and compels the vaccination or re-vaccination of all the inhabitants of Cambridge, without any exceptions or limitations in respect of any of them."

And the defendant requested the court, upon the foregoing evidence, to order and direct the jury to return a verdict of not guilty.

But the court refused to give any of the rulings or instructions requested, and refused to order or direct a verdict of not guilty, and ruled and instructed the jury in substance that if they believed the evidence introduced by the Government, and were satisfied thereby

beyond a reasonable doubt that the defendant was guilty of the offence charged in the complaint, they would be warranted in finding a verdict of guilty.

The jury found and returned a verdict of guilty.

To all and singular the foregoing rulings and instructions, to the exclusion of the said evidence offered in behalf of the defendant, including each and all of the several offers of proof above enumerated and set forth, and to the refusal of the court to order and direct a verdict of not guilty, the defendant duly excepted, and now prays that his said exceptions may be allowed.

By his attorney, J. W. PICKERING.

Filed March 2, 1903.

March 2, 1903.—Allowed.

WILLIAM CUSHING WAIT, *J. S. C.*

"A."

COMMONWEALTH OF MASSACHUSETTS, *Middlesex*, } *To wit:*

To the third district court of Eastern Middlesex, holden at Cambridge for the transaction of criminal business, within the county of Middlesex:

E. Edwin Spencer of Cambridge in said county, in behalf of the Commonwealth of Massachusetts, on the seventeenth day of July, in the year of our Lord one thousand nine hundred and two, on oath complains that the board of health of the city of Cambridge in said county, being of the opinion that it was necessary for the public health and safety, did require the vaccination and re-vaccination of all the inhabitants thereof who had not been successfully vaccinated since the first day of March, in the year of our Lord one thousand eight hundred and ninety-seven, and did provide them with the means of free vaccination, and that Henning Jacobson, being over twenty-one years of age and not under guardianship, did refuse and neglect to comply with such requirement.

E. EDWIN SPENCER.

MIDDLESEX, *ss:*

Received and sworn to, on said day, before said court.

HERBERT J. SPLAINE,
Assistant Clerk.

"B."

CAMBRIDGE, *February* 27, 1902.

Special Meeting of the Board of Health Held this Day at 12 *m.*

Present the full board.

Voted to pass the following regulation regarding vaccination, viz.: Whereas, smallpox has been prevalent to some extent in the city of Cambridge and still continues to increase; and whereas, it is necessary for the speedy extermination of the disease, that all persons not protected by vaccination should be vaccinated; and whereas, in the opinion of the board, the public health and safety require the vaccination or re-vaccination of all the inhabitants of Cambridge; be it ordered that all the inhabitants of the city who have not been successfully vaccinated since March 1, 1897, be vaccinated or re-vaccinated.

The board then adjourned.

A true record.

Attest: JAMES B. SOPER, *Clerk.*

6

"C."

CAMBRIDGE, *March* 19, 1902.

Meeting of the Board of Health.

Voted: Whereas, the following physicians, to wit: —— Felix McGirr —— have been employed by the chairman of this board in the name of the board of health, to enforce the vaccination of
17 persons dwelling in this city in accordance with the vote passed by this board at its special meeting held February 27, it is hereby voted that the action of the chairman be and is hereby ratified, and that the said persons be and are constituted agents of this board for the purpose of vaccination from the dates of their engagement, to wit: —— Felix McGirr March 6, 1902, until otherwise ordered, and

Voted, that their compensation for services rendered be fixed at $2.00 per hour while occupied with vaccinating.

A true record.

Attest: JAMES B. SOPER, *Clerk.*

1903. February 27, verdict, guilty.

The foregoing are true copies.

Attest: THEO. C. HURD, *Clerk.*

18 [Endorsed:] Commonwealth *vs.* Henning Jacobson. Middlesex county Defendant's exceptions.

19 Thence said case was continued for the opinion of the supreme judicial court for said Commonwealth, when on the third day of April, A. D. 1903, it was ordered by said supreme judicial court for said Commonwealth, by its rescript, that the clerk of said superior court for said county of Middlesex make the following entry under said case in the docket of said court, viz:—

"Exceptions overruled.
By the court,

HENRY A. CLAPP, *Clerk.*

April 2, 1903.

Brief Statement of the Grounds and Reasons of the Decision.

The statute is constitutional.
The evidence excluded was immaterial."

Thence the case was continued to the present June sitting, A. D. 1903. And now, on this fifteenth day of June, A. D. 1903, it is considered by the court that the said Henning Jacobson pay to the use of said Commonwealth a fine of five dollars, and stand committed until paid. And on said fifteenth day of June, upon petition of said defendant, a writ of error was granted to the United States Supreme Court, accordingly. And on said fifteenth day of June, after the defendant had filed his writ of error and the bonds required and approved by the court, as hereinafter appears, said defendant was by order of the court discharged from the custody of the sheriff until further order of the court. Said petition is as follows, viz:—

20 COMMONWEALTH OF MASSACHUSETTS, *Middlesex*, } *ss:*

Superior Court for Criminal Business.

COMMONWEALTH OF MASSACHUSETTS, Appellee in Error,
vs.
HENNING JACOBSON, Appellant in Error. } Petition for Writ of Error.

To the Honorable Albert Mason, chief justice of the superior court:

Your petitioner, the defendant in the above entitled cause, says that a verdict of guilty upon a complaint by the Commonwealth of Massachusetts was rendered against him in this court, and that exceptions were taken to the supreme judicial court where said exceptions were duly heard and overruled and thereupon final judgment was rendered against your petitioner in this court; and your petitioner complains that errors of law appear in the record of said cause and respectfully petitions for a writ of error to the Supreme Court of the United States, and that you will issue a citation to the Commonwealth of Massachusetts upon said writ of error, and herewith files his assignments of error as follows:—

(1.) The court erred in such judgment against your petitioner in that your petitioner requested the court to rule and instruct the jury, that section 137 of the Revised Laws chapter 75, under which section said complaint was brought, was unconstitutional and void, because said section is in derogation of the rights secured to the
21 defendant by the preamble to the Constitution of the United States, and tends to subvert and defeat the purposes of said Constitution as there declared, as appears of record in said cause, and that the court refused so to rule and instruct the jury.

(2.) That the court erred in such judgment against your petitioner in that your petitioner requested the court to rule and instruct the jury, that section 137 of chapter 75 of the Revised Laws was unconstitutional and void, because said section violates and infringes the rights secured to the defendant by article 5 of the amendments of the Constitution of the United States; and especially the last clause of said article 5 which reads as follows: "Nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use without just compensation," as appears of record in said cause, and that the court refused so to rule and instruct the jury.

(3.) The court erred in such judgment against your petitioner in that your petitioner requested the court to rule and instruct the jury, that section 137 of chapter 75 of the Revised Laws was unconstitutional and void, because said section is in derogation of the rights secured to the defendant by article 14 of the amendments of the Constitution of the United States, and especially by section 1 of said article, as appears of record in said cause, and that the court refused so to rule and instruct the jury.

(4.) The court erred in such judgment against your peti-
22 tioner in that your petitioner requested the court to rule and instruct the jury, that section 137 of chapter 75 of the Revised Laws was unconstitutional and void because said section was repugnant to the spirit of the Constitution of the United States, as appears of record in said cause, and that the court so refused to rule and instruct the jury.

(5.) That the court erred in such judgment against your petitioner in that your petitioner offered to prove and show by competent evidence each and all of the facts as set forth in your petitioner's bill of exceptions on pages 2 and 4 and numbered 1 to 14 inclusive, as appears of record in said cause, and the court ruled that each and all of said facts so offered were immaterial and excluded each and all of them. Because such evidence tended to prove that said section 137 of chapter 75 of the Revised Laws was unconstitutional and void because it violated and infringed the rights secured to your petitioner by the Constitution of the United States, and particularly by article 5 and section 1 of article 14 of the amendments of said Constitution.

By his attorney, GEO. FRED WILLIAMS.

Filed June 15, 1903.

23 And on said fifteenth day of June said defendant files the following bonds as required by law, viz:—

24 *Bond to Appear and Abide the Final Judgment in the Action.*

Know all men by these presents that we Henning Jacobson of Cambridge in the county of Middlesex and Commonwealth of Massachusetts as principal, and George A. Giles of Cambridge in the county of Middlesex and John P. Wiedemann of Cambridge in the county of Middlesex, both in said Commonwealth, as sureties are held and firmly bound unto the Commonwealth of Massachusetts in the full and just sum of $100 to be paid to the said Commonwealth of Massachusetts to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators jointly and severally by these presents.

The form of the bond and the sufficiency of the sureties are satisfactory. Hugh Bancroft, assistant district attorney, northern district.

Whereas lately at a hearing before the superior court of the Commonwealth of Massachusetts holden at Cambridge within and for the county of Middlesex, for the transaction of criminal business in a suit pending in said court between the Commonwealth of Massachusetts by complaint, and Henning Jacobson, judgment was entered against the said Henning Jacobson, and the said Henning Jacobson having procured a writ of error and filed a copy thereof in the clerk's office of the superior court to reverse the judgment of the aforesaid suit, and a citation directed to the said Commonwealth of Massachusetts citing and admonishing it to be and appear at the Supreme Court of the United States to be holden at Washington within thirty days from the date of said writ of error. Having given a bond in the sum of $100 to the Commonwealth of Massachusetts to prosecute the said writ of error to effect and answer all damages and costs if he fail to make his plea good,

Now, therefore, if the said Henning Jacobson shall prosecute his said writ of error to effect and shall, if unsuccessful, in the
25 prosecution of his said writ of error, appear before the superior court of the Commonwealth of Massachusetts, holden at Cambridge within and for the county of Middlesex for the transaction of criminal business, and abide the final judgment in said action and shall not avoid, then this obligation shall be void, otherwise it shall remain in full force and virtue.

In witness whereof we hereunto set our hands and seals this fifteenth day of June, A. D. 1903.

HENNING JACOBSON. [SEAL.]
GEORGE A. GILES. [SEAL.]
JOHN P. WIEDEMANN. [SEAL.]

Signed and sealed in presence of
GEO. FRED WILLIAMS.

Approved
ALBERT MASON,
Chief Justice of Superior Court.

26 *Bond to Prosecute Writ of Error to Effect*

The form of the bond and the sufficiency of the sureties are satisfactory. Hugh Bancroft, assistant district attorney, northern district.

Know all men by these presents that we Henning Jacobson of Cambridge in the county of Middlesex and Commonwealth of Massachusetts as principal, and George A. Giles of Cambridge in the county of Middlesex and John P. Wiedemann of Cambridge in the county of Middlesex both in said Commonwealth, as sureties are held and firmly bound unto the Commonwealth of Massachusetts in the full and just sum of $100. to be paid to the Commonwealth of Massachusetts to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Whereas lately at a hearing before the superior court of the Commonwealth of Massachusetts holden at Cambridge within and for the county of Middlesex for the transaction of criminal business in a suit pending in said court between the Commonwealth of Massachusetts by complaint, and said Henning Jacobson, judgment was entered against the said Henning Jacobson, and the said Henning Jacobson having procured a writ of error and filed a copy thereof in the clerk's office of said superior court to reverse the judgment of the aforesaid suit and a citation directed to the said Commonwealth citing and admonishing it to be and appear at the Supreme Court of the United States to be holden at Washington within thirty days from the date of said writ of error.

Now, therefore, the consideration of the above obligation is such, that if the said Henning Jacobson shall prosecute his said writ of error to effect and answer all damages and costs if he fail to
27 make his plea good, then the above obligation to be null and void; otherwise to remain in full force and virtue.

In witness whereof we hereunto set our hands and seals this fifteenth day of June A. D. 1903.

HENNING JACOBSON. [SEAL.]
GEORGE A. GILES. [SEAL.]
JOHN P. WIEDEMANN. [SEAL.]

Signed and sealed in presence of
GEO. FRED WILLIAMS.

Approved
ALBERT MASON,
Chief Justice of the Superior Court.

28 COMMONWEALTH OF MASSACHUSETTS, *Middlesex*, } ss:

Superior Court.

Docket Record.

COMMONWEALTH *vs.* HENNING JACOBSON. } 50. Appeal, Refusing Vaccination.

J. W. Pickering.
Geo. Fred Williams.
James A. Halloran.

1902, August. 1903, February 27.—Verdict guilty.
March 2.—Defendant's exceptions and allowed. (Law)
April 3.—Rescript—"Exceptions overruled."
June 15.—Sentence $5.
Upon the filing of the writ of error, and the bonds required and approved by the court, said defendant was, by order of the court discharged from the custody of the sheriff until further order of the court. Petition for writ of error to United States Supreme Court and assignment of error. Bond to appear in $100. and to prosecute writ of error in $100.—approved.

29 COMMONWEALTH OF MASSACHUSETTS:

BOSTON, *June 10th*, 1903.

I certify the annexed to be a true copy of the opinion of the supreme judicial court in the cases of Commonwealth *vs.* Albert M. Pear Commonwealth *vs.* Henning Jacobson decided on the 2nd day of April, 1903.

HENRY WALTON SWIFT,
Reporter of Decisions.

30 KNOWLTON, *C. J.*:

These are complaints against the respective defendants for refusing to comply with a requirement of the board of health of Cambridge, made on February 27, 1902, under the R. L. c. 75, sec. 137, ordering that all the inhabitants of the city, who had not been successfully vaccinated since March 1, 1897, be vaccinated or revaccinated. The order recites that small pox has been prevalent to some extent in the city of Cambridge, and still continues to increase; that it is necessary for the speedy extermination of the disease that all persons not protected by vaccination should be vaccinated; and that, in the opinion of the board, the public health and safety require the vaccination or revaccination of all of the inhabi-

tants of Cambridge. At the trial of each case there was uncontradicted evidence of the adoption of the order making the requirement by the board of health, and that the chairman of the board of health called upon the defendant and informed him that if he refused to be vaccinated he would incur the penalty of $5 provided by the statute, and would be prosecuted therefor, and then and there offered to vaccinate the defendant without any expense to him, and that he then and there absolutely refused to be vaccinated. The requirement of the board of health follows exactly the provisions of the statute. In each case the defence principally relied on is founded upon the refusal of the court to comply with numerous requests for rulings, which, in a variety of forms, called for an instruction that the statute was in violation of the constitution of Massachusetts and of the Constitution of the United States.

In the second of the cases there is also an exception to the exclusion of evidence offered by the defendant to prove numerous propositions in regard to vaccination, chiefly relating to the alleged injurious and dangerous effects of it. We will consider the cases first in reference to the constitutionality of the statute, without regard to the evidence which was excluded. This statute is as follows: "The board of health of a city or town, if in its discretion it is
31 necessary for the public health or safety, shall require and enforce the vaccination and revaccination of all of the inhabitants thereof, and shall provide them with the means of free vaccination. Whoever, being over twenty one years of age and not under guardianship, refuses or neglects to comply with such requirement shall forfeit five dollars." Its language, considered in connection with facts of common knowledge, makes its object plain. It was enacted with a view to the enforcement of necessary measures for the prevention of small pox. That such an object is worthy of the intelligent thought and earnest endeavor of legislators is too plain for discussion. Under the police power there is general legislative authority to make laws for the common good. Article 4 of chapter 1 of the constitution of Massachusetts states more fully than most constitutions the nature of this power, when it gives authority to "the general court from time to time to make, ordain and establish all manner of wholesome and reasonable orders, laws, statutes, ordinances, directions and instructions, either with penalties or without, so as the same be not repugnant or contrary to this constitution, as they shall judge to be for the good and welfare of this Commonwealth," etc. That this power extends to the protection and preservation of the public health is not questioned. Salem *v.* Eastern Railroad, 98 Mass. 431. Slaughter House cases, 16 Wall., 36, 62. Boston Beer Co. *v.* Massachusetts, 97 U. S. 25, 33. Fertilizing Co. *v.* Hyde Park, 97 U. S. 659, 669. The rights of individuals must yield, if necessary, when the welfare of the whole community is at stake. This is true of the right to personal liberty as well as the right to property. People *v.* Warden of City Prison, 144 N. Y. 529, 535. Sometimes it is necessary that persons be held in quarantine. R. L. c. 75, sec. 131. Haverty *v.* Bass, 66 Maine, 71. Minneapolis Railway

v. Milner, 57 Fed. Rep. 276. Conscription may be authorized if the life of the nation is in peril. See Lanahan *v.* Birge, 30 Conn. 438. The use or sale of certain kinds of property may be regulated or prohibited. Fisher *v.* McGirr, 1 Gray, 1. Commonwealth *v.* Waite, 11 Allen, 264. Watertown *v.* Mayo, 109 Mass. 315. Fertilizing Co.
32 *v.* Hyde Park, 97 U. S. 659. Mugler *v.* Kansas, 123 U. S. 652. In these and other ways the liberty of the individual may be interfered with whenever the general welfare requires a course of proceedings to which certain persons object because of their peculiar opinions or special individual interests.

It is a fact of common knowledge that small pox is a terrible disease whose ravages have sometimes swept away thousands of human beings in a few weeks. It is equally well known that a large majority of the medical profession and of people generally consider vaccination, repeated at intervals of a few years, a preventive of the disease. So far as we are aware, all courts that have considered the subject have recognized the right of the legislature to enact laws founded upon the theory that vaccination is important as a preventive of smallpox, and to impose restrictions, during an epidemic, upon persons who have not been vaccinated. There are some cases in which it has been held that the statute did not go far enough to authorize the restrictions which the authorities sought to impose. *In re* Smith, 146 N. Y. 68. Adams *v.* Burdge, 95 Wis. 390. Potts *v.* Breen, 167 Ill. 67. Matthews *v.* Board of Education, 127 Mich. 530. But these assume that the legislature may interfere with the exercise of the ordinary rights of individuals if they are not vaccinated when smallpox is prevalent. Legislation requiring vaccination or authorizing some local board to require it, as a prerequisite to attendance at school, has been sustained whenever called in question. Duffield *v.* School District, 162 Penn. St. 476. Bissell *v.* Davison, 25 Conn. 183. Abeel *v.* Clark, 84 Cal. 226. Blue *v.* Beach, 155 Ind. 121. *In re* Walters, 84 Hun., 457. *Re* Rebenack, 62 Mo. App. 8. Legislation requiring vaccination is mentioned as a proper exercise of the police power in Lawton *v.* Steele, 152 U. S., 133, 136. Statutes substantially the same as the one now before us have been sustained, after careful consideration, by the highest courts of Georgia and North Carolina. Morris *v.* Columbia, 102 Ga. 792. State *v.* Hay, 126 N. C. 999. Levin *v.* Burlington, 129 N. C. 184.

Let us consider the offer of evidence which was made by the defendant Jacobson. The ninth of the propositions which he
33 offered to prove, as to what vaccination consists of, is nothing more than a fact of common knowledge, upon which the statute is founded, and proof of it was unnecessary and immaterial. The thirteenth and fourteenth involved matters depending upon his personal opinion, which could not be taken as correct, or given effect, merely because he made it a ground of refusal to comply with the requirement. Moreover, his views could not affect the validity of the statute, nor entitle him to be excepted from its provisions. Commonwealth *v.* Connolly, 163 Mass. 539. Commonwealth *v.* Has, 122 Mass. 40. Reynolds *v.* United States, 98 U. S.

145. Regina *v.* Downes, 13 Cox, C. C. 111. The other eleven propositions all relate to alleged injurious or dangerous effects of vaccination. The defendant "offered to prove and show by competent evidence," these so-called facts. Each of them, in its nature, is such that it cannot be stated as a truth, otherwise than as a matter of opinion. The only "competent evidence" that could be presented to the court to prove these propositions, was the testimony of experts, giving their opinions. It would not have been competent to introduce the medical history of individual cases. Assuming that medical experts could have been found who would have testified in support of these propositions, and that it had become the duty of the judge, in accordance with the law as stated in Commonwealth *v.* Anthes, 5 Gray, 185, to instruct the jury as to whether or not the statute is constitutional he would have been obliged to consider the evidence in connection with facts of common knowledge, which the court will always regard in passing upon the constitutionality of a statute. He would have considered this testimony of experts in connection with the facts that for nearly a century most of the members of the medical profession have regarded vaccination, repeated after intervals, as a preventive of small pox; that while they have recognized the possibility of injury to an individual from carelessness in the performance of it, or even in a conceivable case without carelessness, they generally have considered the risk of
34 such an injury too small to be seriously weighed as against the benefits coming from the discreet and proper use of the preventive; and that not only the medical profession and the people generally have for a long time entertained these opinions, but legislatures and courts have acted upon them with general unanimity. If the defendant had been permitted to introduce such expert testimony as he had in support of these several propositions, it could not have changed the result. It would not have justified the court in holding that the legislature had transcended its power in enacting this statute on their judgment of what the welfare of the people demands.

An elaborate argument has been addressed to us upon the effect of the quoted words, "wholesome and reasonable" in our constitution. It is at least doubtful whether these words, considered in connection with accompanying provisions, restrict our general court in the exercise of the police power, otherwise than by the constitutional limitations upon this power which exist under the constitutions of most of the other States of this country. It is generally held that if a statute purports to be enacted to promote the general welfare of the people, and is not at variance with any provision of the constitution, the question whether it will be for the good of the community is a legislative, and not a judicial question. Powell *v.* Pennsylvania, 127 U. S. 678, 684, 686. Yick Wo *v.* Hopkins, 118 U. S. 356, 370, 371. Mugler *v.* Kansas, 123 U. S. 623, 662. Bancroft *v.* Cambridge, 126 Mass. 438, 441. Commonwealth *v.* Blackington, 24 Pick. 352, 357. Commonwealth *v.* Alger, 7 Cush. 53, 96, 102. Watertown *v.* Mayo, 109 Mass. 315. Opinion of Justices, 163

Mass. 589, 595. *In re* Jacobs, 98 N. Y. 98, 110. People *v.* Gillson, 109 N. Y. 389, 401. If a law relates to a subject in regard to which the general court is authorized to legislate, this court is not justified in setting aside the statute as unreasonable and unconstitutional merely because the judges differ in opinion from the legislators on the question whether it will "be for the good and welfare of this Commonwealth."

35 But if a statute invades personal rights to liberty or property, and is not directed to the promotion of the general welfare, but is an evasion of the principles on which legislative action should be founded, and by which it should be regulated, and is thus an abuse of legislative power, it should be declared unconstitutional.

We see no reason for regarding the present statute as outside of legislative authority to enact it. Plainly it is wholesome and reasonable in the sense that it relates to a subject about which the legislature may well concern itself. There is no reason for holding that the measures authorized by it do not relate directly to the promotion of the intended object. The theoretical possibility of an injury in an individual case as a result of its enforcement does not show that as a whole it is unreasonable. The application of a good law to an exceptional case may work hardship. There is no reason to suppose that the enforcement of the requirement, in the present case, was conducted harshly. Naturally there would be regard to temporary conditions, if they became important, as to the time and manner of its enforcement. If a person should deem it important that vaccination should not be performed in his case, and the authorities should think otherwise, it is not in their power to vaccinate him by force, and the worst that could happen to him under the statute would be the payment of the penalty of $5.

The defendant's contention that the statute works unequally, in making an exception of minors and persons under guardianship, is not well founded. It only limits the liability to a penalty for neglect of the requirement to persons who have a right to control their own conduct.

We are of opinion that the statute is constitutional and that there was no error at the trial. In each case the entry must be

Exceptions overruled.

36 [Endorsed:] Com. *vs.* Pear Com. *vs.* Jacobson. Certified copy of the opinion of the supreme judicial court. Middlesex *ss.* Jun- 15 1903 Filed in clerk's office.

37 COMMONWEALTH OF MASSACHUSETTS, } *ss.*:
Middlesex, }

I, Theodore C. Hurd, clerk of the superior court within and for said county of Middlesex, hereby certify that the foregoing are true copies of

I. The record in the case of

COMMONWEALTH
vs.
HENNING JACOBSON

II. The docket record
III. The opinion of the full court;
And of all the proceedings in said case, with all things concerning the same.

In witness whereof, I hereunto set my hand and affix the seal of said superior court, this twenty-third day of June in the year of our Lord one thousand nine hundred and three.

[Seal the Superior Court.]

THEO. C. HURD, *Clerk.*

38 *Citation on Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Commonwealth of Massachusetts, Greeting:

You are hereby cited and admonished to be and appear in the United States Supreme Court, in the city of Washington, District of Columbia, *within thirty days from the date hereof next, pursuant to a writ of error filed in the clerk's office of the † superior court of the county of Middlesex and Commonwealth of Massachusetts wherein Henning Jacobson of Cambridge in said county of Middlesex is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Albert Mason chief justice of the superior court of Massachusetts, this fifteenth day of June, in the year of our Lord one thousand nine hundred and three.

ALBERT MASON,
Chief Justice, Superior Court.

---

* Not exceeding 30 days from the day of signing.
† Name of court to which writ of error is directed.

39 Service of the within citation is hereby accepted for the Commonwealth of Massachusetts.

FREDERICK H. NASH,
Assistant Attorney General of Massachusetts.

40 UNITED STATES OF AMERICA:

Supreme Court of the United States.

HENNING JACOBSON, Plaintiff in Error,
vs.
COMMONWEALTH OF MASSACHUSETTS, Defendant in Error.

Assignment of Errors.

On this fifteenth day of June A. D. 1903 comes the said Henning Jacobson by Geo. Fred. Williams & James A. Halloran, his attorneys, and shows that in the record and proceedings in said cause there is manifest error in this, to wit:—

(1.) The court erred in such judgment against your petitioner in that your petitioner requested the court to rule and instruct the jury, that section 137 of chapter 75 of the Revised Laws of the Commonwealth of Massachusetts, under which section said complaint was brought, was unconstitutional and void, because said section is in derogation of the rights secured to the defendant by the preamble to the Constitution of the United States, and tends to subvert and defeat the purposes of said Constitution as there declared, as appears of record in said cause, and that the court refused so to rule and instruct the jury.

(2.) That the court erred in such judgment against your petitioner in that your petitioner requested the court to rule and instruct the jury, that section 137 of chapter 75 of the Revised Laws of the Commonwealth of Massachusetts, was unconstitutional and void, because said section violates and infringes the rights secured to the defendant by article 5 of the amendments of the Constitution of the United States; and especially the last clause of said article 5 which reads as follows: "Nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property
41 without due process of law; nor shall private property be taken for public use without just compensation," as appears of record in said cause, and that the court refused so to rule and instruct the jury.

(3.) The court erred in such judgment against your petitioner in that your petitioner requested the court to rule and instruct the jury, that section 137 of chapter 75 of the Revised Laws of the Commonwealth of Massachusetts was unconstitutional and void, because said section is in derogation of the rights secured to the defendant by article 14 of the amendments of the Constitution of the United States, and especially by section 1 of said article, as appears of record in said cause, and that the court refused so to rule and instruct the jury.

(4.) The court erred in such judgment against your petitioner in that your petitioner requested the court to rule and instruct the jury, that section 137 of chapter 75 of the Revised Laws of the Commonwealth of Massachusetts was unconstitutional and void because said section was repugnant to the spirit of the Constitution of the United States, as appears of record in said cause, and that the court refused so to rule and instruct the jury.

(5.) That the court erred in such judgment against your petitioner in that your petitioner offered to prove and show by competent evidence each and all of the facts as set forth in your petitioner's bill of exceptions on pages 2 and 4 numbered 1 to 14 inclusive, as appears of record in said cause, and the court ruled that each and all of said facts so offered were immaterial and excluded each and all of them. Because such evidence tended to prove that said section 137 of chapter 75 of the Revised Laws of the Commonwealth of Massachusetts was unconstitutional and void because it violated and infringed the rights secured to your petitioner by the Constitution of the United States, and particularly by article 5 and section 1 of article 14 of the amendments of said Constitution.

HENNING JACOBSON,
By his attorneys, GEO. FRED. WILLIAMS,
JAMES A. HALLORAN.

42 [Endorsed:] United States of America Supreme Court of U. S. In error to superior court of the Commonwealth of Massachusetts Henning Jacobson, pl'ff in error *v.* Commonwealth of Massachusetts, def't in error. Assignment of errors. From the office of Geo. Fred. Williams & James A. Halloran, r'm 50, No. 209 Wash. St., Boston, Mass.

43 UNITED STATES OF AMERICA:

Supreme Court of the United States.

HENNING JACOBSON, Appellee in Error,
vs.
COMMONWEALTH OF MASSACHUSETTS, Appellant in Error.

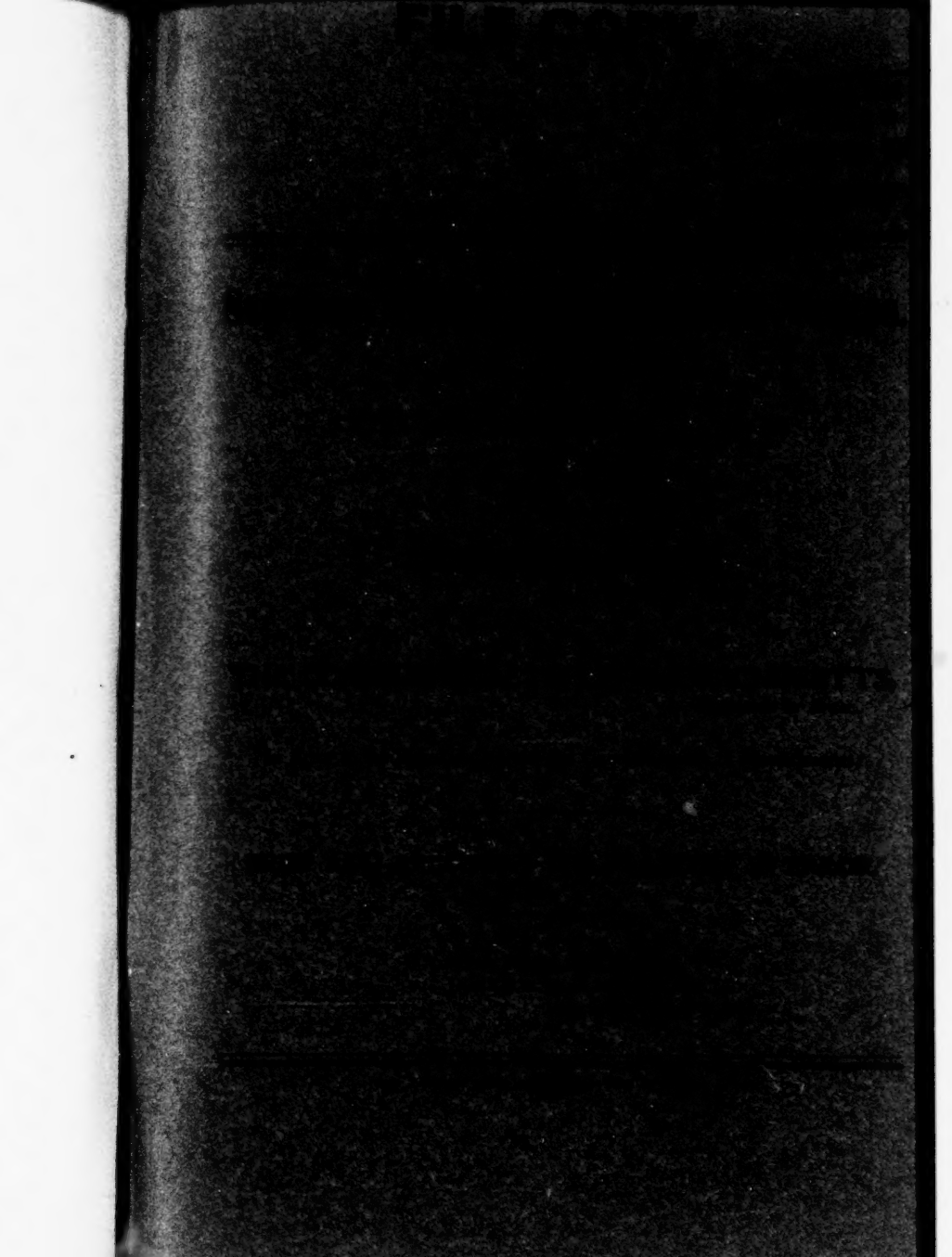
Prayer for Reversal.

In the above entitled cause for manifest error that happened therein, as appears in the petition of said appellant in error for a writ of error to said Supreme Court of the United States, and as more particularly appears in the assignment of errors filed therein, said appellant in error prays that the final judgment rendered in said cause in the superior court for the county of Middlesex and Commonwealth of Massachusetts may be reversed.

HENNING JACOBSON,
By his attorneys, GEO. FRED. WILLIAMS,
JAMES A. HALLORAN.

44 [Endorsed:] United States of America. Supreme Court of the United States Henning Jacobson, appellee in error, *v.* Commonwealth of Mass., appellant in error. Appellant's prayer for the reversal of judgment. From the office of Geo. Fred Williams & James A. Halloran, r'm 50, No. 209 Wash. St. Boston Mass.

Endorsed on cover: File No. 18990. Massachusetts superior court. Term No. 339. Henning Jacobson, plaintiff in error, *vs.* The Commonwealth of Massachusetts. Filed June 29, 1903.



Supreme Court of the United States

No. 70. — October Term, 1904.

HENNING JACOBSON, Plaintiff in Error,

vs.

THE COMMONWEALTH OF MASSACHUSETTS,
Defendant in Error.

IN ERROR TO THE SUPERIOR COURT OF THE COMMONWEALTH OF MASSACHUSETTS.

STATEMENT OF THE CASE.

The plaintiff in error was on the twenty-third day of July, One Thousand Nine Hundred and Two, brought before the Third District Court of Eastern Middlesex County upon a complaint under Revised Laws, Ch. 75, S. 137, which complaint (Rec. p. 2) was as follows:

"That the Board of Health in the City of Cambridge in said county, being of the opinion that it was necessary for the public health and safety, did require the vaccination and revaccination of all the inhabitants thereof who had not been successfully vaccinated since the first day of March in the year of our Lord One Thousand Eight Hundred and Ninety-seven, and did provide them with the means of free vaccination and that Henning Jacobson, being over twenty-one years of age and not under guardianship, did refuse and neglect to comply with such requirement."

To this complaint the plaintiff in error pleaded that he was not guilty, and upon hearing it was ordered by the Court that

the plaintiff in error "for the offence aforesaid forfeit and pay a fine of five ($5.00) dollars to the use of said Cambridge and that he stand committed until sentence be performed."

From this judgment and sentence the plaintiff in error appealed to the Superior Court for the County of Middlesex. In said Superior Court the plaintiff in error appeared on the twenty-seventh day of February, A. D. One Thousand Nine Hundred and Three, and thereupon was put upon trial before a jury, and said jury found a verdict of guilty. On the second day of March, A. D. One Thousand Nine Hundred and Three, the plaintiff in error alleged exceptions (Rec. p. 5) to the exclusion of certain evidence as follows:

He offered to prove and show by competent evidence certain facts set forth on pages 6 and 7 of the record, which in substance were that

1. Vaccination often results in injury to health.
2. Vaccination occasionally causes death.
3. Vaccination causes loathsome diseases.
4. The result of vaccination cannot be foretold in any case.
5. Vaccination results in incapacitating sickness, more or less prolonged.
6. Impure condition of the blood makes vaccination dangerous.
7. Danger from impurity of the blood cannot be tested.
8. Virus is often impure and purity cannot be tested.
9. Vaccination consists in inoculation with a disease by incision.
10. Inoculation causes numerous diseases.
11. Cow pox is analagous to syphilis, and sores are of a syphilitic nature.
12. Vaccination does not prevent smallpox but spreads the disease.
13. Defendant refused vaccination because he had previously suffered from it.
14. Defendant's son had suffered severely and defendant feared serious consequences.

Upon this question of evidence the Court ruled that each and all of the facts so offered to be proved by the defendant (plaintiff in error) were immaterial, and excluded each and all of them, and all of the evidence thus offered.

The defendant (plaintiff in error) asked the Court to rule and instruct the jury, among other things, (set forth in Rec. p. 6) that S. 137 of Ch. 75 was unconstitutional and void,

Because it was in derogation of the rights secured to the defendant by the preamble, the Fifth and Fourteenth Amendments and the spirit of the Constitution of the United States.

The defendant (plaintiff in error) thereupon requested the Court upon the foregoing evidence to order a verdict of not guilty, but the Court refused to give any of the rulings or instructions requested, and ruled and instructed the jury in substance that if they believed the evidence introduced by the Government, and were satisfied thereby beyond a doubt that the defendant was guilty of the offence charged, they would be warranted in finding a verdict of guilty.

The jury found and returned a verdict of guilty, and the defendant (plaintiff in error) duly excepted to the rulings and instructions and to the exclusion of the evidence offered, including the several offers of proof above enumerated, and to the refusal of the Court to order a verdict of not guilty.

Said exceptions were allowed March second, One Thousand Nine Hundred and Three, and were heard by the Supreme Judicial Court, which decided, on the second day of April, One Thousand Nine Hundred and Three, that the exceptions should be over-ruled for the reasons set forth in an opinion delivered by the Court, June tenth, One Thousand Nine Hundred and Three (Rec. p. 15). See

Commonwealth *v.* Pear and Jacobson, 183 Mass. 242.

Thereupon on the fifteenth day of June in the Superior Court the defendant (plaintiff in error) was sentenced to pay a fine of five ($5.00) dollars, whereupon this defendant sued out a writ of error, which was issued June fifteenth, One Thousand Nine

Hundred and Three, by the Chief Justice of the Superior Court, in which writ this defendant prayed for a reversal of the final judgment aforesaid, and as causes of error assigned substantially as above set forth, that Sec. 137, Ch. 75 of the Revised Laws of the Commonwealth of Massachusetts was unconstitutional and void as against the preamble of the Constitution, as against Article V and Article XIV of the Amendments of the Constitution, and as against the spirit of the Constitution of the United States, and further that the Court erred in excluding the evidence above set forth, and refusing to rule as requested by the plaintiff in error.

BRIEF OF ARGUMENT.

Points and Authorities.

Revised Laws, Ch. 75, Sec. 137, are as follows:

"The Board of Health of a city or town if, in its opinion, it is necessary for the public health or safety shall require and enforce the vaccination and revaccination of all the inhabitants thereof and shall provide them with the means of free vaccination. Whoever, being over twenty-one years of age and not under guardianship, refuses or neglects to comply with such requirement shall forfeit five dollars."

An exception to said section is contained in Revised Laws, Ch. 75, Sec. 139, as follows:

"Children who present a certificate, signed by a registered physician that they are unfit subjects for vaccination, shall not be subject to the provisions of section six of chapter forty-four or of the three preceding sections, and their parents or guardians shall not be liable to the penalties imposed by section one hundred and thirty-six."

The plaintiff in error does not press the assignment No. 2, which relates to the Fifth Amendment to the Constitution of the United States, but respectfully submits that said section is unconstitutional:

1. Because it is contrary to the preamble of the Constitution of the United States, which declares that the Constitution is ordained and established "to promote the general welfare, and secure the blessings of liberty to ourselves and our posterity."

2. Because it is contrary to the Fourteenth Amendment of the Constitution, to wit, Sec. 1 thereof, which provides that "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Compulsory Vaccination not yet Considered by this Court.

The right of the state under police power to enforce vaccination upon its inhabitants has not yet been determined, or more than remotely considered by this Court.

Mr. Justice Browne delivering the opinion in

Lawton *v.* Steele, 152 U. S. 133,

in reciting the powers which might be wielded by the state, remarked that they had been held to include "The compulsory vaccination of the child," but cites no authorities and makes no further reference to the subject.

Mr. Justice Strong in

Hannibal and St. Joseph Railroad Company, 95 U. S., 465.

refers to the right of the state to exclude "persons afflicted by contagious or infectious diseases."

Mr. Justice Peckham in the recent case of

The American School of Magnetic Healing *v.* McAnnulty, 187 U. S. 94,

in considering the right of the Postmaster General to prohibit

the delivery of letters alleged to be fraudulent, refers to the subject of vaccination in these words.

"As the effectiveness of almost any particular method of treatment of disease is, to a more or less extent, a fruitful source of difference of opinion, even though the great majority may be of one way of thinking, the efficacy of any special method is certainly not a matter for the decision of the Postmaster General within these statutes relative to fraud. Unless the question may be reduced to one of fact, as distinguished from mere opinion, we think these statutes cannot be invoked for the purpose of stopping the delivery of mail matter.

"Vaccination is believed by many to be a preventive of smallpox, while others regard it as unavailing for that purpose. Under these statutes could the Postmaster General, upon evidence satisfactory to him, decide that it was not a preventive, and exclude from the mails all letters to one who practiced it and advertised it as a method of prevention, on the ground that the moneys he received through the mails were procured by false pretenses."

The plaintiff in error knows of no other cases in which the subject of vaccination has been considered by this Court.

A SUMMARY OF VACCINATION LAWS.

Vaccination Statutes in the United States.

Thirty-four states of the Union have no compulsory vaccination law, as follows:

Alabama, Arkansas, California, Colorado, Delaware, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oregon, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, and Wisconsin.

Compulsory vaccination exists in eleven states, as follows:

Connecticut, Georgia, Kentucky, Maryland (of children),

Massachusetts, Mississippi, North Carolina, Pennsylvania (in second class cities), South Carolina, Virginia and Wyoming.

In thirteen states exclusion of unvaccinated children from the public schools is provided, as follows:

California, Georgia, Iowa, Maine, Massachusetts, New Hampshire, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, South Dakota and Virginia.

It thus appears that three-quarters of the states of the Union have not entered upon the policy of enforcing vaccination upon their inhabitants by legal penalty. Not one of the states undertakes forcible vaccination of its inhabitants, while the states of Utah and West Virginia expressly provide that no such compulsion shall be used.

Smallpox has ceased to be the scourge which it once was, and the plaintiff in error believes that there is a growing tendency to resort to sanitation and isolation rather than vaccination.

It is certainly not apparent that the states which make no provision for vaccination are any more afflicted with the disease of smallpox than those which undertake to force vaccination upon their citizens. Even the State of New York, which imports the major part of the immigrants who annually enter this country, has not undertaken to force upon the people the compulsory vaccination policy.

In other countries these laws are constantly called into question. The Queen of Holland has recently recommended the repeal of the compulsory vaccination laws of her kingdom. There are no vaccination laws in New Zealand, and Switzerland has by plebiscit abolished all compulsory vaccination.

The English law (61 and 62 Vict. Ch. 49), provides only for the vaccination of children, under a penalty, and furnishes to the people a special vaccinator. But under Sec. 2 of the Act no parent is liable to a penalty if he satisfies a magistrate that he conscientiously believes that vaccination would be prejudicial to the health of the child and gives a certificate of such conscientious objection. Thus it appears that even in England the state does not attempt to enforce vaccination upon adult citizens and re-

spects the conscientious objection of a parent to the inoculation of his child. Even these laws, apparently harmless when compared with the compulsory acts of eleven of our states, have excited violent opposition in many towns and cities, and occasioned much heated agitation against the laws.

In the early part of November, 1904, riots were reported in Brazil arising from the attempt to enforce vaccination upon the citizens.

In 1903 the State of Minnesota, in Ch. 299 of its laws of that year, abolished vaccination as a condition precedent to school attendance and compulsory vaccination of a child by any board or public officer.

In 1901, Governor La Follette, of Wisconsin, vetoed a compulsory vaccination bill similar to that of Massachusetts, even though it exempted persons securing certificates of physicians that vaccination would be dangerous to their health, and all persons declaring that it was contrary to their religious belief. The governor in his veto message declared that the "police power to preserve public health must be exercised only from necessity plainly evident." He further declared that "It might be well questioned whether the opinions or judgment of the health officers can be accepted in lieu of facts as the determinate evidence of necessity for such exercise of legislative power." He further said that "the exempting provisions of this bill afford legislative recognition of the existence of more grave dangers to the citizen than the liability of contagion from the loathsome disease which is sought to be avoided." He added "But I cannot ignore the fact that laws of this character are repugnant to very many good citizens, even among those who are not opposed to vaccination from religious beliefs or prejudices. In some states they have resulted in riots and strife which have outlived the epidemic. Within very recent years, laws providing for compulsory vaccination have been repealed in respect to experience."

In the State of Indiana, after the decision in the case of

Beech *v.* Blue, 155 Ind. State, 121,

that vaccination was a condition precedent to attendance in the public schools, the people promptly amended the statutes by legislative act of March 11, 1901, to obviate this decision.

It should be observed that in the case of

Osborn *v.* Russell, 64 Kansas, 507,

it was decided that under a law to "supervise the health interest of the people of the state" the state board of health had no power to enforce vaccination as a condition of attendance upon public schools. This case is suggestive as indicating that, apart from a specific legislative act for compulsory vaccination, the courts will not imply the existence of such a police power in the public authorities though vested with the largest authority to protect the public health.

Cases Considered in the State Courts.

The cases involving vaccination laws which have already been considered by State Courts have mainly been decided upon statutes relating to the exclusion of children from the public schools.

Bissell *v.* Davison, 65 Conn. 183.
Abeel *v.* Clark, 84 Cal. 226.
State *v.* Zimmerman, 86 Minn. 353.
Osborn *v.* Russell, 64 Kan. 507.
Potts *v.* Breen, 167 Ill. 67.
Duffield *v.* Williamsport School District, 162 Pa. 476.
State *v.* Burdge, 95 Wis. 390.
Re Rebenack, 62 Mo. App. 8.
Blue *v.* Beach, 155 Ind. 121.

The only cases which have considered general compulsory vaccination laws are

State *v.* Hay, 126 N. C. 999.
Morris *v.* Columbus, 102 Ga. 792.
Re William H. Smith, 146 N. Y. 68.

State *v.* Hay, 126 N. C. 999, determines as follows:

The laws of North Carolina give authority to the local boards to secure the vaccination of inhabitants within their jurisdiction. The Court, in this case, in construing the law assumed that where it would be unsafe to submit to vaccination the Legislature did not intend to enforce the law. It was indicated by the Court that it was a matter for defence and for the jury what circumstances would relieve a person from a compliance with the law.

Douglass, J., in concurring, declared that it could not be supposed that the Legislature intended to enforce the law where the conditions of health might make it dangerous, and that there must be some tribunal to determine when such conditions exist. This power he deemed rested in the courts and that even if the law were for the general welfare there must be a limit. He suggested that the law to kill all persons with a certain disease could not be enforced. "Therefore, can we suppose that the Legislature either would or could enforce vaccination even under the peculiar conditions of health of the past, if it might reasonably be expected to endanger his life."

Morris *v.* Columbus, 102 Ga. 792, was a case under an ordinance of the City of Columbus which had authority from the Legislature to declare that vaccination should be compulsory on all persons living in the county or any part thereof. The ordinance excepted persons furnishing the certificate of a physician that the injection of the virus would be injurious. It was held that this was a reasonable exercise of power conferred upon the city authorities by the Legislature.

Re William H. Smith, 146 N. Y. 68, the relators complained that they were restrained of their liberty in Brooklyn by order of the Commissioner of Health, who alleged as the cause that they had refused to be vaccinated. The Commissioner claimed the right to quarantine any person refusing to be vaccinated. It was held that the statute contemplated that where persons or properties are to be affected by isolation *the fact must exist* either that they are infected with the contagious disease or that they

have been exposed to it; that legislation had not relieved officials from the responsibility of showing that the exercise of their power was justified by the facts in the case. The Court expressly decided that the power of the Legislature to enact the health law was not involved, but the issue was whether the exercise of power by the Commissioner of Health was warranted. The Court held that the action of the Commissioner of Health was not warranted.

It will be perceived that in the North Carolina case it was assumed that due process of law entitled a defendant to offer evidence that vaccination would be injurious to him. Under this decision the plaintiff in error was entitled to present to the jury his evidence that his former vaccination had been attended with serious results.

In the Georgia case provision was made for the exemption of a person who presented a certificate that vaccination would be injurious.

In the New York case it was held that the fact of existence of a contagious disease, or of exposure to it, must be established before the health authorities could exercise the police power of quarantine or isolation.

None of these cases are as extreme as the decision in Massachusetts upon the case of the plaintiff in error.

School Cases Distinguished.

The laws providing that unvaccinated children shall not attend the public schools are widely variant from laws compelling the vaccination of adult citizens.

The public school is a state institution in the nature of a beneficent business enterprise for the improvement of the population. No right to attend the schools is inherent in our laws, unless the state constitution confers it. Attendance at school is a privilege. The school is a part of the state's domestic economy, and the state may regulate it in its own discretion. It may exclude any one it chooses.

To provide vaccination as one of the conditions of admission

to school is widely different in legal status from providing a legal penalty upon citizens for refusing vaccination.

The police power is not at all involved in exclusion from the schools; but it alone can warrant interference with the person of the citizen.

These cases do not involve what the plaintiff in error complains of as "compulsory vaccination."

The school cases may therefore be dismissed from consideration with a reference to the case of

Bissell *v.* Davison, 65 Conn. 183.

It was there held that the statute authorizing exclusion of children from the public schools for failure to be vaccinated formed a part of the laws relating to the common school system, and must be read as part of those laws. It was held that to attend school was a privilege, and not a right, to be enjoyed under such conditions and restrictions as the law-making power within Constitutional limits might see fit to impose; that what restrictions might best subserve the ends sought in the establishment and maintenance of public schools was a question solely for the Legislature and not for the courts. That while the statute might authorize vaccination as one condition of admission to the public schools, it could not authorize or compel compulsory vaccination. The act was merely an exercise of power to promote the interests of the schools.

The Police Power is for the Security of Liberty and not for Oppression.

"The Fourteenth Amendment, in declaring that no state 'Shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws,' undoubtedly intended, not only that there should be no arbitrary deprivation of life or liberty or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstance in the enjoyment

of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property."

Barbier *v.* Connolly, 113 U. S. 27.

To justify an exercise of the police power beyond the mere suppression of nuisances, it must appear that the interests of the public are affected and "*that the means are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals.*"

Lawton *v.* Steele, 152 U. S. 133.

The state intervenes to secure the personal health, preservation and comfort of the citizens, and punishes those who violate it. But except under compulsory vaccination laws it has not yet undertaken to attack the health of individuals.

The Police Power. Its Admitted Functions.

The plaintiff in error does not deny the right to the exercise of the police power within any accepted definition of that power.

Blackstone (4 Commentaries, 162) defines this power as "The due regulation of domestic order of the Kingdom, whereby the inhabitants of a state, like members of a well governed family, are bound to conform their general behaviour to the rules of propriety, good neighborhood and good manners, and to be decent, industrious and inoffensive in their respective stations."

Judge Cooley (Constitutional Limitations, page 704) declares "The police of a state, in a comprehensive sense, embraces its whole system of internal regulation, by which the state seeks not only to preserve the public order and to prevent offences against the state, but also to establish for the intercourse of citizens with citizens those rules of good manners and good neighborhood, which are calculated to prevent a conflict of rights, and to insure to each the uninterrupted enjoyment of his own, so far as is reasonably consistent with a like enjoyment of rights by others."

While the police power might properly be exercised to protect this plaintiff in error as a citizen of the United States from compulsion from any source, even the state itself, to be inoculated with a disease, no constitutional precedent can be found which justifies the exercise of the police power to compel a citizen to submit himself to an assault and to inoculation with a disease.

Hannibal and St. Joseph Railroad Co., *v.* Husen, 95 U. S. 465, 470,

defines the character of police power in the following words:

"What that power is, it is difficult to define with sharp precision. It is generally said to extend to making regulations promotive of domestic order, morals, health and safety. As was said in Thorp *v.* Railroad Co., 27 Vt. 149,

'It extends to the protection of the lives, limbs, health, comfort and quiet of all persons, and the protection of all property within the state. According to the maxim, *Sic utere tuo ut alienum non laedas*, which, being of universal application, it must, of course, be within the range of legislative action to define the mode and manner in which everyone may so use his own as not to injure others.' . . . . It may also be admitted that the police power of the state justifies the adoption of precautionary measures against social evils. Under it a state may legislate to prevent the spread of crime or pauperism or disturbances of the peace. It may exclude from its limits, convicts, paupers, idiots and lunatics, and persons likely to become a public charge, as well as persons afflicted by contagious or infectious diseases; a right founded, as intimated in The Passenger cases, 7 How. 283, by Grier, J., in the sacred law of self-defense.

"The same principle, it may also be conceded, would justify the exclusion of property dangerous to the property of citizens of the state; for example, animals having contagious or infectious diseases. All these exertions of power are in immediate connection with the protection of person and property against noxious acts of other persons, or such a use of property as is injurious to the property of others. They are self-defensive."

The plaintiff in error is willing to submit himself to such exercise of police power as is indicated in this decision of this Court. He does not deny that if he or his property be infected with

contagious or infectious disease, or if he commits any noxious act, it is the right and duty of the state to defend the rest of the community against him as a public, or even as a private nuisance, but nowhere within this decision, or any other which has been made by this Court can he be constitutionally made subject to such criminal prosecution when he is in health and does no act whatever which can offend his fellow-citizens.

The police power rests upon well-founded principles, all of which have their basis and reason in existing offensive acts or conditions. Offensive trades, noisome occupations, pollution of air or water, unsafe or unhealthy buildings, burials, transportation of dead bodies, cemeteries, burning fluids and adulteration of food or drink contain present conditions which are a menace to the public health or safety. The regulation of medicine and dentistry and similar occupations is based upon the protection of the community from unskillfulness in those who undertake to deal with the bodies or health of the people.

Mr. Justice Strong in

Hannibal and St. Joseph Railroad Co. *v.* Husen (*ubi supra*)

confines the exercise of police power to "persons afflicted by" or "animals having contagious or infectious diseases," but this court has not yet decided that the police power can be imposed upon healthy citizens, merely because as human beings they have the potentiality of contracting contagious diseases.

A Compulsory Vaccination Law Unreasonable, Arbitrary, Oppressive.

The plaintiff in error disclaims any objection to voluntary vaccination, which should be open to the citizen from free choice if he believes in its efficacy and desires to undergo its dangers. It is against the compulsory feature of the Massachusetts law that the plaintiff protests. A compulsory vaccination law, like that involved in the case at bar, is founded upon unreasonable and false theories in many respects.

1. The Law is Only Effective in Protection of Law Breakers.

It is not a reasonable or legitimate exercise of legislative power, because it undertakes to compel a man to do for the protection of other men what other men can voluntarily do to protect themselves. The law, therefore, is predicated upon a failure of its own enforcement, for if all the people of Massachusetts except the plaintiff in error were vaccinated and, therefore, immune, the plaintiff could do no harm to the rest of the community, and if he were neglectful of his own health the penalty would fall upon himself. The only possible victims of the plaintiff's failure to be vaccinated would be those who had themselves failed or refused to be vaccinated. In other words, who had themselves violated the law.

Is it possible that an exercise of the police power of the state can be predicated upon the protection of those who are themselves violating the law which calls forth such an exercise of power?

Viewed from the standpoint of the individual to be protected, may it not fairly be asked, if I, who neglect to be vaccinated, have a right to demand of my neighbor that he be vaccinated to protect me. Clearly if the method is effective I have it in my power to protect myself. Viewed from the standpoint of the community at large, if I am the only unvaccinated person, I suffer alone and others, who have become immune, are in no danger. The only answer to this proposition is that vaccination is but a partial remedy; this is but an argument against the law itself which, to obtain doubtful results, insists that the citizen should introduce into his own healthy system, and the systems of his children or wards, a disease which may produce ill-health and death. In any event, considering it as a partial remedy, every person in the community can avail himself by his voluntary act of whatever protection it affords, and I, in declining to avail myself of the same protection, am at best a possible and not a present menace to their health.

2. The Legal Penalty — Illogical and Unjust.

The defendant in error will hardly care to contend that the state has a right to seize upon the citizen and insert into his blood the virus of vaccination, although in England, under the Act of 1867 (30 and 31 Vic. Ch. 84), vaccination was enforced upon children in many cases, and it was judicially determined that where a parent had refused to cause the vaccination of a child the court might order the child to be vaccinated.

> Regina *v.* Justice of Cinque Ports, L. R. 17 Q. B. D. 191.
> Dutton *v.* Atkinson, L. R. 6 Q. B. 373.

The utmost that the law undertakes to do is to provide a penalty for its violation. After I have paid the penalty I am as much a menace to the community as I was before, and if the effect of the law be that with one payment I may continue to be a menace to the public health, as was held in England (Pilcher *v.* Stafford, 4 Vest & S. 775), the law is too absurd to justify its existence.

If I may be repeatedly fined for recalcitrancy, as was provided by the English Act 30 and 31 of Vic. Ch. 84, 31, See

> Allen *v.* Worthy, L. R. 5 Q. B. 163.
> Tebb *v.* Jones, 37 L. T. N. S. 576.

then the argument made by the Supreme Court of Massachusetts as to the insignificance of the fine of $5 is fallacious and unjust. The fine of $5 may be increased to $100 by the costs of prosecution, and if, as has occurred in Massachusetts, repeated prosecutions have been brought against the same individual, the accumulation of fines and taxes may become an insupportable burden and result in the imprisonment of the offender. There are many citizens of Massachusetts who cannot pay a fine of $5, and who must stand committed to prison under this law unless under such compulsion they submit themselves to the dangers of vaccination, and the violation of their persons. Any law providing a fine, together with the costs of prosecution upon appeal, as in this case, is practically compulsory upon a large

class of citizens who are without means of payment. As a man and his wife and family may be included in the prosecution, the seriousness of the penalty should not be underestimated.

3. *The Law Not of General Application.*

By the law of Massachusetts, children and minors under guardianship are exempted from penalty. Thus the law itself provides for classes in the community which may and must mix with the rest of the community unprovided with the alleged immunity of vaccination. But more than this, the law of Massachusetts only provides for local vaccination whenever the Board of Health of a city or town shall deem it necessary. Thus the law is not of general application throughout the state, and, assuming the efficacy of vaccination, all non-residents entering or leaving a city or town are as much a menace to the inhabitants as are those who may be amenable to this law through the initiative of the Board of Health.

Admitting, as the plaintiff in error does, that any person infected, or who has even been exposed to smallpox, is subject to all defensive measures of sanitation or isolation which the authorities may adopt, he does insist that as a healthy resident of the City of Cambridge he is discriminated against and oppressed by a law which subjects him to fine or imprisonment for refusing to inoculate himself with disease, while his fellow-citizens of the state may come into his city or his home as visitors, menacing as much danger as he could menace, and yet be free from all prohibition or penalty.

4. Compulsion to Introduce Disease into a Healthy System is a Violation of Liberty.

The plaintiff in error offered to prove at his trial, what the defendant in error will hardly deny here, that vaccinia, which results from vaccination with cow lymph, is a disease that is produced by inoculation through incision or puncturing. In other words, it involves a surgical operation upon the person of the citizen and the introduction of an independent disease which does not

otherwise afflict humanity. It is a disease known in common parlance as cow pox.

In the history of our Republic, and, indeed, of England, there is no parallel to such legislation. A person, healthy or unhealthy, is required, under the penalty of the law, to submit himself to the dangers of a new disease, which, as is well known and as was offered to be proved by the plaintiff in error, often causes loathsome and dangerous diseases.

Were the state to seize upon a citizen and by force compel him to submit to such an operation, revolution and overthrow of the government would be the certain result among a free people. If so obnoxious a process is forced upon a citizen under the penalty of the law, nothing but absolute certainty of the results and the direst necessity can justify such legislation.

"Life is the gift of God and the right to preserve it is the most sacred of the rights of man." Swayne, J., in

Slaughter House Cases, 16 Wall, 36.

Yet the plaintiff in error offered to prove in his second proffer of evidence that vaccination causes death.

"Liberty is freedom from all restraints but such as are justly imposed by law. Beyond that line lies the domain of usurpation and tyranny." Swayne, J. (*ubi supra.*)

Yet the plaintiff offered in vain to prove that vaccination by incision is a cause of disease; is followed by suffering and sickness in all successful inoculations, more or less severe, and that the plaintiff and his son had theretofore been caused great suffering by such inoculation.

By what precedent of Constitutional or Statutory law can a citizen be punished who menaces no present injury to his fellowmen, and who objects to a present injury to himself, inflicted upon the order of the state for the purpose of protecting others from possible injury. Wherein has a citizen violated the law upon which the police power is based, viz.: That he shall so use his own as not to injure others. Surely in going about in the community, healthy and law-abiding, he does no injury to the

community or the state, and the plaintiff in error challenges upon any theory of the legislative power in this Republic the right of the state to penalize him for preserving his health, even against the admonition of the state.

The preamble of the Constitution declares it to be one of the purposes of the instrument to "secure the blessings of liberty to ourselves and our posterity." Liberty of the citizen in the very first analysis is immunity of his person from seizure or injury, except for the commission of an offence against the state, and the vaccination law of Massachusetts is a violation of his fundamental right to liberty as guaranteed to English speaking peoples from Magna Charta, through the Constitution of the United States to the Fourteenth Amendment.

Damage Without Compensation

In Miller *v.* Horton, 152 Mass. 546, it was decided, under a law providing for the killing of infected animals, that "a public officer would be liable in damages if an animal killed was not in point of fact infected with the disease."

If the owner of an animal is entitled thus to recover for loss of property, shall he be held to be without remedy where his own health is injured by the state.

Yet here is a law which makes no provision that the state shall supply physicians or pay the expense of physicians who may attend and treat a vaccinated person when he is suffering from a disease inflicted by order of the Legislature. While a citizen afflicted with a menacing disease is liable under the law to be restrained of his liberty, isolated from his fellow-men and subjected to disinfection, it may be questioned whether within the rules of constitutional liberty he could be forced to submit to surgical operations against his protest. How much higher and more unquestionable is his right when in full health to be free from such infliction; but if the state cause him to suffer, and inflict a sickness which incapacitates him from labor, by what constitutional right can the state thus deprive him of liberty and property without compensation?

The Vaccination Law not within any Cognizable Principle of Criminal Law.

The plaintiff in error respectfully submits that he has been subjected to punishment under a law which has no basis in the established principles of criminal law, and that it is not within the sovereign right of any state to create an offense by statute which has none of the recognizable features of a criminal act in either American or English jurisprudence.

A crime consists, according to every accepted definition, in an act done with an evil intent. While it may be that the refusal to obey the statute of the Commonwealth may be taken to constitute an evil intent, none the less if the plaintiff has done no act whatever, either of negligence or commission, an intent cannot be presumed.

"To entitle the state to complain some act must have followed the unlawful thought. This doctrine is fundamental and in a general way universal." (Bishop, Crim. Law, Vol. 1, Sec. 204.) Likewise to constitute a crime the public must suffer. (*Ib*, Sec. 230.) It is true that the act may be an act of omission, but the omission must involve "a degree of negligence which naturally leads to certain results." And within this rule the State of Massachusetts has even gone beyond other states in holding that no crime is committed, even where death resulted from the administration of powerful drugs, if there was an honest intention and purpose to cure. (Com. *v.* Thompson, 6 Mass. 134.)

The criminal law undoubtedly extends to the protection of public health, convenience and safety, and under this head numerous offences in the character of nuisances are cognizable.

With respect to contagious diseases, the duty of a citizen is well defined in Mr. Bishop's Criminal Law, Vol. 1, Sec. 490.

"It is no crime for a man to be sick of a contagious disease in his own house, or his friends to decline removing him, but if he goes into the public way or takes out an infected child, or a horse, with a disease communicable by infection to man it is indictable."

Likewise it is not denied that the maintenance of a filthy house or unhealthy manufactures is indictable. The selling or keeping for sale of unwholesome food, violations of quarantine, importing infected cattle, conducting noxious trades and selling adulterated milk are all indictable nuisances within well-accepted principles of the law; and the maintenance of an existing nuisance or menace to the community constitutes the act which is cognizable by the criminal law.

For the protection of population the criminal law punishes suicides or self-mayhem, because a man may not deprive the community of what he may do for it by taking his own life or incapacitating himself for public service. (Bishop, Criminal Law, Vol. 1, Sec. 513.)

To this extent the state protects the citizen himself against his own act and has the right to preserve the health of the citizen for the service of the state and his fellow-men, but this is not parallel with a demand of the state that a citizen shall, by force of a legal penalty, lay violent hands upon himself or permit the representative of the state to lay violent hands upon him against his will.

If a man obstruct public places or keeps explosives in populous places he is exposing, by the present menacing character of his act, the public to an existing danger. So in the carrying of dangerous weapons, so in any disturbance of the peace or repose of the community, there is some positive condition which constitutes an act, which of its own nature involves an evil intent. In most cases the condition existing is that of a nuisance to the community.

There was no act on the part of this plaintiff in error either of omission or commission, nor was there any intent, good or evil, to constitute a crime. His condition of health menaced neither any man nor the community. By his negligence no one has suffered.

Everything of *sufficient magnitude*, calculated to impair the public health is indictable. (Bishop, Crim. Law, Vol. 1, Ch. 35.)

The possibility that plaintiff, or any other citizen, may be

hereafter infected with smallpox is too small a matter upon which to predicate a criminal penalty.

There is no such offense known to the law as neglect or refusal to protect one's self from disease. It is not a nuisance for the plaintiff to remain healthy.

Misprision of nuisance is the utmost claimable for this offense and there is no such thing as misprision of a misdemeanor.

This attack upon the person of the citizen is no more to be justified by a mere legislative act than would be acts of attainder, bills of pains and penalties and acts of confiscation, which would not be cognizable or constitutional in the United States.

Dartmouth College *v.* Woodward, 4 Wheat. 518, 581.

Applying any yet accepted test of a criminal act, the vaccination statute of the State of Massachusetts fails of justification, and if the law has any basis in the history of our civilization and development, this statute, and all others of a like character, must fall under the ban as a violation of liberty and devoid of due process of law. .

The Exemptions in the Mass. Act are Unconstitutional.

The section of R. L. Ch. 75, which is in question, and section 139 following, contain exemptions from the operation of the act which furnish the testimony of the act itself that the legislative enforcement of a compulsory vaccination law is unjust and oppressive. Section 137 exempts from its own operation persons under 21 years of age and persons under guardianship, and section 139 exempts children who present certificates from physicians that they are "unfit subjects" for vaccination.

An adult citizen is thus penalized, where minors are exempt, and is excluded from furnishing evidence to the public authorities that he is an "unfit subject" for vaccination, and he must, regardless of his condition of ill-health, either submit to the dangerous operation or be subjected to a fine or imprisonment for refusal.

In the case at bar the plaintiff in error undertook to show that he had suffered seriously from previous vaccination, thus indicating that his system was sensitive to the poison of vaccination virus. The like illness of his son indicated that a hereditary condition existed which would cause the system to rebel against the introduction of the vaccine matter.

And it is clear from the statute that if the plaintiff in error had offered the opinion of a physician that vaccination might even be deadly in its effects upon the plaintiff, the law recognized no such defense, and the evidence must have been excluded. The law itself, therefore, testifies to its own oppressive and unreasonable character.

It is not due process of law, when such a defense is excluded. It is not equal protection of the laws, when such defense is open to parents for the protection of children and is not open to parents themselves. The right of the plaintiff was "of such an important and fundamental character as to deprive him of his liberty without due process of law."

West *v.* Louisiana, 194 U. S. 258, 262.

Likewise in exempting children with certificates the court can "see clearly that there is no fair reason for the law, that would not require with equal force its extension to others whom it leaves untouched."

Missouri, Kansas & Texas Ry. Co. *v.* May, 194 U. S. 267.

As this protection is a vital and necessary right of self-defense, the exemption of children does not constitute a classification which has a "*reasonable basis*," and it is mere "arbitrary selection."

Gulf, Colorado, etc. R. R. Co. *v.* Ellis, 165 U. S. 150.

The Board of Health Entrusted With Arbitrary Powers.

The Board of Health, not a judicial tribunal, is vested with the authority which determines substantial rights of the citizen.

1. It may enforce vaccination without regard to the existence of smallpox or its severity. The law of Minnesota opens up the question of fact as to the existence of an epidemic, and does not leave it to the caprice of a board of health to impose vaccination, when the community is not really menaced.

2. The law does not define what constitutes vaccination. Hence a citizen of one town or city may be required to be vaccinated every year or every month, while the citizen of another town may be required by another board of health to subject himself to vaccination once in many years or not at all. The plaintiff in error insists that this is not the equal protection of the laws which is guaranteed by the Fourteenth Amendment of the Constitution.

3. There should be all possible tests of the vaccine matter by the state, or the vaccine matter should be prepared and furnished by the state so that the citizens may not be in doubt as to which of the vaccine matters may be the least dangerous. If it be a legitimate function of the state to introduce disease into a citizen, it would seem clear that the state ought to prepare the disease, so as to give assurance that only the right disease is to be injected.

4. If, as the Massachusetts Court has held, this law cannot be assailed because necessity does not exist for its application, or because plaintiff has suffered severe results from the same operation, or because the process is inefficacious, dangerous, and it cannot be made certain or safe, then the board of health is the only tribunal to which he can appeal and as this is not a judicial tribunal he is deprived of his liberty without due process and of the equal protection of the laws. The board of health determines necessity, methods and plaintiff's rights without hearing.

Chicago, Milwaukee *v.* St. Paul R. R. *v.* Minnesota, 134 U. S. 418.

Hagar *v.* Reclamation District No. 108, 111 U. S. 701.

The oppressive character of the law of Massachusetts appears in the fact that it forces vaccination upon all persons in a given

city or town whether they be sick, aged, infirm, diseased, including pregnant women, who have not the privilege bestowed upon minor children to present the certificate of physicians that their health would be endangered by vaccination. The arbitrary decision of the health authorities constitutes his only safeguard.

The Massachusetts Law has not the Justification of Necessity.

The unreasonableness of the vaccination law further appears in the fact that vaccination is not an absolute preventive, and no physician or health board would undertake to declare it to be other than a partial or possible preventive. Such a claim would be absurd in the face of the thousands of demonstrations to the contrary. In a compulsory law of this character can the extreme exertion of police power be based upon so doubtful a matter. His Honor, Mr. Justice Holmes, in the case of

Miller *v.* Horton, 152 Mass. 546,

speaking of the exercise of the police power used these words:

"It would seem doubtful at least whether actual necessity ought not to be the limit when the question arises under the Constitution between the public and an individual."

Taking these words in connection with the statement of Mr. Justice Peckham in

American School of Magnetic Healing *v.* McAnnulty, (*ubi supra*)

it would appear to have already suggested itself to justices of this Court that vaccination is a matter of opinion upon which authorities are divided, and that where the right of the state and the rights of the individual clash under the police power, necessity should be the test of the exercise of that power. Not only is vaccination not proved to be a necessary precaution against smallpox, but at the most it relieves from the remote chance of infection, while it is, as the plaintiff offered to prove, and as is

within general knowledge, sure to produce some sickness, pain and inconvenience, and in frequent cases produces serious results.

The Exclusion of Plaintiff's Evidence.

The plaintiff in error begs to call attention to his offers of evidence which would have shown that medical science has not yet shown what cow pox is, and why it only appears in female kine. The very character of the inoculating material and the method of preparation have shifted from year to year and are still a matter of serious difference of opinion.

The law of Massachusetts does not state what vaccination is or what vaccine matter must be used in order to constitute vaccination. Before cow pox was discovered inoculation from one person to another was the method adopted.

The plaintiff might have proved from Dr. S. W. Abbott, secretary of the Massachusetts State Board of Health for many years, that for twenty years his lack of confidence in the lymph produced in Massachusetts, was such that he had never used or purchased a particle of it.

It is lustily claimed by manufacturers of vaccine points that glycerinated vaccine is a breeder of bacteria and of disease, and the manufacturers of glycerinated vaccine in turn, charge that vaccine points are liable to infection or poison in their operation.

Public prints cannot have escaped the attention of the members of this court which contain violent denunciations among the advocates of the different kinds of virus, and from this discussion it would appear that there is not a virus in the market which is free from contamination and danger except that which is manufactured by the person then speaking.

It is familiar that eminent medical authorities assert that vaccination is utterly ineffective in curbing smallpox, and that the disease and evils arising from it are much greater than those arising from smallpox itself.

The plaintiff in error might have proved, had he been allowed, that Dr. Willson, as stated by him in the Journal of the American Medical Association, May 10, 1902, has personally investigated fifty-two cases of tetanus arising from vaccination.

The plaintiff might have exhibited the health reports of the State of Massachusetts which in each year are full of cases of persons who have contracted smallpox after successful vaccination.

It was left to the Board of Health of the city of Cambridge to determine how often a person must be vaccinated in order to become immune and it decided that five years was a reasonable limit. Yet the originator of cow pox insisted that vaccination, once effective, would last a lifetime, while the law of Germany requires vaccination every seven years, and Dr. Durgin, chairman of the Boston Board of Health, in the Boston Medical and Surgical Journal, December 25, 1902, declares that "a child should be vaccinated repeatedly until it no longer takes effect."

Effect of Intrenching a Compulsory Vaccination Law.

It is true that the police power is a shifting quantity expressing more or less social, economic and political conditions (See Freund on Police Power, page 3), and the decision in this case may to a great extent be determinative of the methods to be hereafter employed in the treatment of contagious diseases.

If vaccination of a healthy person enforced by penalty is justified by the highest court of the land, it will fix the tendencies of the health authorities and of physicians to increase the use of such methods.

Dr. Marmoreck has discovered a serum for the cure of tuberculosis. It would be much more reasonable to enact laws for compulsary inoculation with his serum, inasmuch as tuberculosis kills hundreds of citizens where smallpox kills one.

September 22, 1904, The Boston Medical and Surgical Journal reports the increasing prevalence of diphtheria in Newark, N. J.,

and says, "The Board of Health is acting energetically in the matter and has adopted the practice of ordering preventive anti-toxin inoculation in the members of families of persons attacked.

Dr. Maragliano has recently reported, in the Berliner Klinische Wochenschrift, June 13, 1904, that he has an anti-dysenteric serum and believes it possible to render people immune against the disease by its use.

The publications concerning the litigation in the matter of Mrs. Crocker have called to attention recently the claims which are made for the curing of cancer by inoculation of serums.

The present tendency of medical science is toward the treatment of contagious diseases by the use of serums, and it is entirely possible that public authorities and physicians may be encouraged to extend the vaccination scheme to all other contagious diseases and set up a general compulsory medical regime, which will subject a healthy community to attack by boards of health under compulsory laws. If it be justifiable to compel the inoculation of a citizen for one disease, then by a parity of reasoning it is for the public interest that every citizen should be inoculated to render him immune against all possible contagions which may menace the community.

The terrible results, which have repeatedly followed vaccination, have alarmed many of our citizens, and if we are to be subjected to further experimentation upon our bodies, to guard against other diseases, vivisection will become a human question of prime importance.

The plaintiff in error is making no contention here against the voluntary use of vaccination or against methods of treating actually existing contagious diseases.

In the treatment of actually existing disease the public authorities may have the right to impose inoculation upon persons who may be tuberculous, diphtheretic, cancerous or dysenteric, inasmuch as in a diseased condition they may be taken to be a menace to the public health and regarded as nuisances in the eye of the law. The court has here to deal with a man in full health

who objects to inoculation with a disease and to a punishment for declining to subject himself to injury.

The claim of those who are opposed to vaccination, including many leading medical authorities, is that the proper treatment of epidemic contagious diseases is sanitation and isolation.

The plaintiff in error might have proved at his trial, had the evidence offered not been excluded, that in the year 1900 there were 993 cases of smallpox in the city of Cleveland, and 1223 cases from January to August of 1901; that Dr. Martin Friederich, chief of the Cleveland Board of Health, seeing the inefficiency of vaccination which had prevailed up to that time, and being alarmed by several cases of tetanus which had occurred in consequence of vaccination, stopped the use of vaccination and undertook to treat the epidemic through disinfection, removal of filth and isolation of patients. The result was that in a year thereafter there was not a single case of smallpox remaining in the city, though under full swing of vaccination the disease had raged uninterruptedly from 1893 to August of 1901.

The plaintiff would also have been able to prove that in the city of Leicester, England, the people rebelled against vaccination and took up effective sanitation. The authorities have since then been unable to enforce the vaccination laws, and Leicester is now the least vaccinated city in England and the freest from smallpox.

Security of Freedom Involved

The plaintiff in error makes no attack upon the legitimate use of the police power, when he or any other citizen is in a bodily or mental condition, which menaces his neighbors' health or comfort. He is willing to use himself and his property so as not to do injury to others.

The Court in the Slaughter-House Cases (*ubi supra*) points out that the purpose of the Thirteenth, Fourteenth and Fifteenth Amendments of the Constitution was the freedom of the African

race and the security and perpetuation of that freedom. As the Fourteenth Amendment has so often been appealed to for the protection of property, this plaintiff appeals to it with confidence for the protection of his freedom.

GEO. FRED WILLIAMS,
JAMES A. HALLORAN,
Counsel for Plaintiff in Error.

Supreme Court of the United States.

No. 70. October Term, 1904.

HENNING JACOBSON, Plaintiff in Error,

v.

COMMONWEALTH OF MASSACHUSETTS.

BRIEF FOR THE DEFENDANT IN ERROR.

Statement of the Case.

The Revised Laws of Massachusetts, chapter 75, section 137, provide as follows:—

> The board of health of a city or town if, in its opinion, it is necessary for the public health or safety, shall require and enforce the vaccination and re-vaccination of all the inhabitants thereof and shall provide them with the means of free vaccination. Whoever, being over twenty-one years of age and not under guardianship, refuses or neglects to comply with such requirement shall forfeit five dollars.

On the 27th of February, 1902, the board of health of the city of Cambridge, Massachusetts, passed the following vote:—

> Voted to pass the following regulation regarding vaccination, viz.:—
>
> Whereas small-pox has been prevalent to some extent in the city of Cambridge and still continues to increase; and whereas it is nec-

essary for the speedy extermination of the disease, that all persons not protected by vaccination should be vaccinated; and whereas in the opinion of the board, the public health and safety require the vaccination or re-vaccination of all the inhabitants of Cambridge; be it ordered that all the inhabitants of the city who have not been successfully vaccinated since March 1, 1897, be vaccinated or re-vaccinated.

On the 6th of March, 1902, the board of health, acting by its chairman, E. Edwin Spencer, appointed one Felix McGirr, a physician, agent to enforce the vaccination of persons dwelling in Cambridge; and by the following vote of March 19, 1902, ratified this action, thus providing means of free vaccination: —

March 19, 1902.

Voted: Whereas, the following physicians, to wit: Felix McGirr, have been employed by the chairman of this board in the name of the board of health, to enforce the vaccination of persons dwelling in this city in accordance with the vote passed by this board at its special meeting held February 27, it is hereby voted that the action of the chairman be and is hereby ratified, and that the said persons be and are constituted agents of this board for the purpose of vaccination from the dates of their engagement, to wit: Felix McGirr, March 6, 1902, until otherwise ordered, and

Voted, that their compensation for services rendered be fixed at $2 per hour while occupied with vaccinating.

On the 15th of March, 1902, the board of health, by its chairman, called upon the plaintiff in error and required him to be vaccinated, at the same time offering him vaccination free of expense; but he absolutely refused to be vaccinated.

Thereupon the plaintiff in error was duly convicted under the above statute of refusing to comply with such requirement of the board of health, and a fine of five dollars was

imposed upon him. At the trial the plaintiff in error offered to prove, —

(1) What vaccination is — a matter of common knowledge, proof of which was unnecessary and immaterial. (9th offer of proof.)

(2) His own opinion concerning the little value of vaccination, with the historical basis of it. (13th and 14th offers of proof.)

(3) The opinion of experts that vaccination sometimes has injurious or dangerous effects.

This evidence, which might properly have been presented to the Legislature in opposition to the enactment of the above statute delegating power to the board of health to require vaccination in its discretion, but which was incompetent after the Legislature had adjudicated vaccination to be an efficacious preventive of small-pox, being all that the plaintiff in error offered, was excluded. He did not seek to show that in his own case the requirement of the board of health was oppressive, or that by reason of his state of health or other circumstance vaccination would be dangerous to him at the time. He merely attacked the theory of public policy which had guided the Legislature.

In his assignments of error (Record, page 12) he raises in various forms the objection that his conviction was in derogation of his rights under the preamble and the spirit of the Federal Constitution, and effected a denial of due process of law, in violation of the Fifth and Fourteenth Amendments thereof.

Argument.

I.

It is no argument that the conviction was repugnant to the spirit or to the preamble of the constitution. An act of the Legislature of a State and regular proceedings under it

are to be overthrown only by virtue of some specific prohibition in the paramount law.

Forsythe *v.* City of Hammond, 68 Fed. 774, 777.

Baker, J.,—

Courts would find themselves upon a shoreless sea, with neither chart nor compass to direct their course, if they should undertake the task of declaring statutes invalid because of their supposed conflict with the principles of natural justice, or because they were supposed to be violative of the spirit of constitutional governments.

Walker *v.* Cincinnati, 21 Ohio, St. 14, 41.

Scott, C. J.,—

Courts cannot nullify an act of the Legislature on the vague ground that they think it opposed to a general "latent spirit" supposed to pervade or underlie the Constitution, but which neither its terms nor its implications clearly disclose in any of its parts. To do so would be to arrogate the power of making the Constitution what the court may think it ought to be instead of simply declaring what it is. The exercise of such a power would make the court sovereign over both Constitution and people, and convert the government into a judicial despotism. Whilst we declare that legislative power can only be exercised within the limits prescribed by the Constitution, we are equally bound to keep within the sphere alloted to us by the same instrument.

State *v.* Staten, 6 Coldwell, 233, 252.

Smith, J.,—

This court does not entertain the notion that it is authorized to declare a statute void because of the repugnancy to the *spirit* of the Constitution. Considerations of this kind are properly addressed to the legislative body; courts only act when the conflict is shown

with an express provision of the organic law, or with a necessary implication from an express provision.

State *v.* Gerhardt, 145 Ind. 439, 450.
State *v.* Smith, 44 Ohio, St. 348, 374.
People *v.* Fisher, 24 Wend. 214, 219.
Redell *v.* Moores, 63 Nebr. 219, overruling
State *v.* Moores, 55 Nebr. 480.

II.

The Fifth Amendment does not apply to action by a State.

Barron *v.* Baltimore, 7 Pet. 243, 247.
Eilenbecker *v.* Plymouth Co., 134 U. S. 31.
McElvaine *v.* Brush, 142 U. S. 155, 158.
Brown *v.* New Jersey, 175 U. S. 172.
Capital City Dairy Co. *v.* Ohio, 183 U. S. 238.
Lloyd *v.* Dollison, 194 U. S. 445.

It is now too late to argue that the provisions of the Fifth Amendment securing the fundamental rights of the individual as against the exercise of federal power, are by virtue of the Fourteenth Amendment to be regarded as privileges and immunities of a citizen of the United States.

Slaughter-house Cases, 16 Wall. 36.
Maxwell *v.* Dow, 176 U. S. 581.

The privileges and immunities of the plaintiff in error except where he comes in contact with the machinery of the federal government, are those which his own State gives him. In his relations with his State he takes no benefit from the Fifth Amendment or from the preamble of the United States Constitution.

III.

In its unquestioned power to preserve and protect the public health, it is for the Legislature of each State to determine whether vaccination is effective in preventing the spread of small-pox or not, and deciding in the affirmative to require doubting individuals to yield for the welfare of the community.

In re Smith, 146 N. Y. 68, 77.

No one will dispute the right of the Legislature to enact such measures as will protect all persons from the impending calamity of a pestilence, and to vest in local authorities such comprehensive powers as will enable them to act effectively.

Powell *v.* Pennsylvania, 127 U. S. 678, 683.

If a statute is a bona fide exercise of the police power of the State, for the protection of the health of the people, it is not inconsistent with the Fourteenth Amendment.

There can be no doubt that the statute in the present case was enacted as a health measure, and has a real and substantial relation to that object. It cannot be seriously contended that this statute has some ulterior object which it seeks to conceal under a pretended desire to promote the public health.

Compare, by contrast, the statute forbidding the manufacture of cigars in tenement-houses (In re Jacobs, 98 N. Y. 98), the statute forbidding people to give away articles in connection with a sale of food (People *v.* Gillson, 109 N. Y. 389), and the statute forbidding bakers' employees to work more than ten hours a day (People *v.* Lochner, 177 N. Y. 145. Dissenting opinion).

Only in such cases of legislative dissimulation is it held that a law, apparently looking to the protection of the public health and working without undue classification, is a violation of the Fourteenth Amendment.

Mugler *v.* Kansas, 123 U. S. 623.
Sentell *v.* New Orleans, etc., Ry. Co., 166 U. S. 698, 704, 705.
Hawker *v.* New York, 170 U. S. 189, 192.
Holden *v.* Hardy, 169 U. S. 366.

In Lawton *v.* Steele, 152 U. S. 133, 136, it is said, by way of illustration, that compulsory vaccination is a proper exercise of the police power.

It has been directly so held in Morris *v.* City of Columbus, 102 Ga. 792, and State *v.* Hay, 126 N. C. 999.

The courts may not listen to conflicting expert testimony as to the efficacy or hurtfulness of vaccination in general. The Legislature is the only body which has power to determine whether the anti-vaccinationists or the majority of the medical profession are in the right. To paraphrase the language of the court in Powell *v.* Pennsylvania, *supra*, —

The Legislature of Massachusetts, upon the fullest investigation, as the court must conclusively presume, has determined that general vaccination will promote the public health. If all that can be said of this legislation is that it is unwise or unnecessarily oppressive to people in general, their appeal must be to the Legislature or to the ballot-box, not to the judiciary. The latter cannot interfere without usurping powers committed to another department of government. The possibility of the abuse of legislative power does not disprove its existence. That possibility exists even in reference to powers that are conceded to exist. It is not a part of the functions of the court to conduct investigations of fact entering into questions of public policy merely to sustain or frustrate the legislative will

embodied in statutes, as they may happen to approve or disapprove its determination of such questions.

That the Legislature has large discretion to determine what personal sacrifice the public health, morals and safety require from individuals is elementary.

Booth *v.* Illinois, 184 U. S. 425.
Austin *v.* Tennessee, 179 U. S. 343.
Lawton *v.* Steele, 152 U. S. 133, 136.
Mugler *v.* Kansas, 123 U. S. 623.
Fertilizing Co., *v.* Hyde Park, 97 U. S. 659.

IV.

It must be conceded that the Legislature of Massachusetts has power to require the vaccination of its inhabitants and fix appropriate penalties for refusal. The remainder of our argument considers the form of this legislation and its application to the plaintiff in error.

1. The exception of minors and wards from the provisions of the statute, resting upon a reasonable basis of classification, denies to nobody the equal protection of the laws. As observed by the supreme court of Massachusetts, it only limits the liability to a penalty to persons who have a right to control their own conduct. Another section of the statute imposes a penalty upon parents and guardians for neglecting to cause the vaccination of their children and wards (R. L. chap. 75, § 136).

2. The statute properly left discretion with the board of health to determine under what conditions it was necessary to enforce vaccination. The undisputed condition on which the board based its action was the prevalence and continual spread of small-pox in the city. Thus the general order of the board, passed Feb. 27, 1902, is not open to objection.

The advantage of uniform and general laws is best at-

tained by vesting discretionary power in local administrative bodies.

Wilson *v.* Eureka City, 173 U. S. 32.
See *Health Department v. Rector of Trinity Church*, 145 N. Y. 32,

in which a statute was upheld requiring owners of tenement houses to furnish water at one or more places on each floor whenever directed to do so by the board of health, although it was argued that the exercise of the police power to require water for health and protection against fire could be properly manifested only in a statute containing details and limitations.

A perfectly equal law may easily be the most unjust; for example, a statute requiring the vaccination of all the inhabitants of Massachusetts during the first week in November of every fifth year, irrespective of the presence of small-pox and without regard to individual conditions of health, or a set of rules and regulations made by the Legislature itself, which must necessarily be more or less inelastic, would be far less just than this statute which delegates discretion to local public officials.

It is wise legislation which leaves the necessity for general vaccination and the decision as to the time for vaccination of each individual to the local boards of health. If they act in an arbitrary manner, depriving any individual of a right protected by the Fourteenth Amendment, their action in such individual case is void. Thus the law in general stands, but particular cases of oppression may be prevented.

Compare

Yick Wo *v.* Hopkins, 118 U. S. 356,

and

Jew Ho *v.* Williamson, 103 Fed. 10,

with

Williams *v.* Mississippi, 170 U. S. 213.

See *Ex parte* Virginia, 100 U. S. 339,
Carter *v.* Texas, 177 U. S. 442,
Tarrance *v.* Florida, 188 U. S. 519.

3. The order of the board of health is clearly within the authority of the statute.

All the cases holding orders requiring vaccination to be invalid are decided on the ground that the orders were broader than the authority given by statute.

In Mathews *v.* Board of Education, 127 Mich. 530, the board of education, under general statutory power to "do all things needful and desirable for the maintenance, prosperity and success of the schools," made a rule that no pupil should be admitted to a public school who had not been vaccinated or otherwise secured against small-pox. There was no statute specifically authorizing such rule. A majority of the court held that a writ of mandamus should issue to compel the admission of the petitioner's unvaccinated children to the schools, it appearing that there was no small-pox in the city. The court said: —

> It was not a question as to what the Legislature might do, or whether the Legislature could confer this power upon the school board. The board had not the power to change the conditions established by law, as to who should attend school, by passing a general continuing rule excluding children from the public schools until they complied with conditions not imposed by the Legislature, although a rule requiring children to be vaccinated as a condition of attending school temporarily during an epidemic, would be authorized.

In Potts *v.* Breen, 167 Ill. 67, it appeared that the board of health was authorized to make such rules and regulations as they might from time to time deem necessary for the preservation or improvement of the public health. Without

further authority than this, they passed an order permanently excluding from the public schools unvaccinated children. Small-pox did not exist in the community, and there was no cause to apprehend that it was likely to become prevalent. There were no grounds upon which the board could have had any reasonable belief that the public health was in any danger whatever. The court held, upon a petition for mandamus to compel the admission to school of children who were not vaccinated, that the order was not authorized by the statute, there being no emergency requiring the board of health to take action. The court observed that if there had been an emergency or if the Legislature had expressly conferred upon the board of health the power exercised by it, the result would have been different.

State *v.* Burdge, 95 Wis. 390, was a case exactly similar to Potts *v.* Breen, *supra*. There was no epidemic of small-pox in or near the city, and the State board of education had no belief or apprehension that it was prevalent in the city or approaching it; yet by an arbitrary order of the board of education, under a rule of the board of health, with no statute upon the subject, the board excluded from the schools every child who did not produce a certificate either of successful vaccination or that it had been vaccinated twice within the last three months. Writ of mandamus issued.

See also Lawbaugh *v.* Board of Education, 177 Ill. 572.

In *In re* Smith, 146 N. Y. 68, the board of health had authority to require the isolation of all persons and things arriving from infected places or which from any cause were liable to communicate contagion; and in the presence of great and imminent peril to public health, by reason of impending pestilence, had authority to take such measures for

the preservation of public health as should be deemed necessary for the public safety and health. There was an epidemic of small pox in a certain ward of the city. The health commissioner thereupon made a rule that any person refusing to be vaccinated should be quarantined until he consented to such vaccination. The authorities quarantined the petitioner, an expressman, in his house, because he refused to be vaccinated, although he was not infected and had not been exposed. Upon *habeas corpus* he was released, the court holding that the rule was broader than was authorized by the statute, since there was no authority of law to require vaccination, and the facts did not show any ground for belief that the petitioner was liable to spread contagion.

In Wong Wai *v.* Williamson, 103 Fed. 1, the board of health of San Francisco, under a statute giving it general control of all matters pertaining to the protection of the lives and health of the inhabitants, adopted an order declaring its belief in the existence of bubonic plague in the city, and prohibiting any Chinese from leaving the city without first being inoculated with a certain serum called Haffkine Prophylactic. There was no special legislative authority for dealing with bubonic plague. The court held that the order was void, having no reasonable relation to the protection of the health of the inhabitants of the city, since it appeared as a fact that the serum was not a preventive after a person had been exposed to the disease, but that giving it to a person exposed was dangerous to life. An order requiring it to be given to all Chinese before leaving the city where the plague was supposed to be, did no good as to those not infected and did harm to those who were infected. It therefore had no relation to the protection of the health of people in the city. The Chinese might stay in the city whether infected or not, without being inoculated or quarantined.

Compare similar quarantine regulations held to be unauthorized, because broader than any statutory basis for them.

Wilson *v.* Alabama, etc., R.R. Co., 77 Miss. 714.
Hurst *v.* Warner, 102 Mich. 238.

Even without express statutory authority, if small-pox is prevalent it is held that a board of health may require vaccination as a condition of attending school.

Duffield *v.* Williamsport School District, 162 Pa. 476.

In this case, there being small-pox in the city and an epidemic in places near by, the board of health, although there was no statute dealing with the subject, required vaccination as a condition of attending school, and provided free vaccination for those unable to bear the expense. The rule was not enforced against those who were not in a condition of health to undergo vaccination. The court refused a writ of mandamus to compel the admission of the petitioner's children, on the ground that in a time of epidemic this was a reasonable regulation under the general powers of the board of health.

To the same effect are

Field *v.* Robinson, 198 Pa. St. 638.
State *v.* Board of Education, 21 Utah, 401.

All such orders, passed, as in the present case, in the exercise of special authority from the Legislature, have been sustained by the State courts wherever their validity has been questioned.

Blue *v.* Beach, 155 Ind. 121, is the leading case upon this point, discussing all the prior cases.

In Bissell *v.* Davidson, 65 Conn. 183, the school committee of a city, under a statute giving it power to require that every child should be vaccinated before being permitted to attend the public schools, made a rule excluding all pupils unless they had been properly vaccinated, and providing free vaccination for all who were unable to pay for it. A writ of mandamus to require the admission of unvaccinated children was denied. The court held that the power given by the statute was reasonably exercised, and that the reasonableness of the statutory requirement was a question exclusively for the Legislature, and that the statute did not deprive the plaintiff of any right without due process of law.

In Morris *v.* City of Columbus, 102 Ga. 792, a statute authorized every city to require vaccination of all its inhabitants. A city ordinance of Columbus required vaccination within ten days of every person over two years old, except those who had been successfully vaccinated within seven months, or were immune, or in such a state of health that vaccination would be dangerous. Held, that the ordinance with its exceptions was a reasonable exercise of the power conferred by the Legislature, and that neither the statute nor the ordinance was in violation of constitutional limitations.

In State *v.* Hay, 126 N. C. 999, a statute authorized towns and cities to make such regulations for the vaccination of their inhabitants, under the direction of the board of health, and to impose such penalties as they deemed necessary to protect the public health. An ordinance of the town of Burlington required all citizens not successfully vaccinated within three years, to be vaccinated within four days; all persons refusing, to incur a penalty of a ten-dollar fine or imprisonment for thirty days. The defendant refused to be vaccinated, for the reason that he had been advised and believed that it would be dangerous for him by reason of his physical condition. At the trial, however, the defendant did not make his physical condition a ground of defence. The

statute and ordinance were held to be constitutional, the court saying: —

> If a people can draft or conscript its citizens to defend its borders from invasion, it can protect itself from the deadly pestilence that walketh by noonday by such measures as medical science has found most efficacious for that purpose.

The court observed that if the jury had found that the defendant's health was in such condition that it would be unsafe for him to submit to vaccination, that would be a sufficient excuse for his non-compliance, since to vaccinate him under such conditions would be an arbitrary and unreasonable enforcement of the statute.

See also Abeel *v.* Clark, 84 Cal. 226.
State *v.* Bell, 157 Ind. 25.
State *v.* Zimmerman, 86 Minn. 353.
Matter of Walters, 84 Hun. 457.

4. The action taken by the board of health in the case of the plaintiff in error did not infringe his rights under the Federal Constitution.

It is conceded that arbitrary action by the board of health, "with evil mind," might result in a denial of due process of law. If they picked out one class of persons arbitrarily for immediate vaccination, while indefinitely postponing action toward all others, or if they abused their discretion as to time and manner of proceeding, by requiring everybody to be vaccinated at a certain time, without regard to the state of his health, their action might be in violation of the Fourteenth Amendment.

Yick Wo *v.* Hopkins, 118 U. S. 356, 373.
Wong Wai *v.* Williamson, 103 Fed. 1.
Jew Ho *v.* Williams, 103 Fed. 10.
Williams v. Miss., 170 U. S. 213.

But there is no suggestion of arbitrary conduct. It is not even hinted that in the exercise of their discretion they failed to make proper discrimination as to temporary conditions. If there were special reasons why the plaintiff in error could not be vaccinated at the time required by the board of health, he should have made them a ground of his refusal; and, if the board neglected to consider them, a defence to his prosecution.

State *v.* Hay, 126 N. C. 999.
See Penn. R.R. Co. *v.* Jersey City, 47 N. J. L. 286.

The statute did not require the vaccination and revaccination of all the inhabitants, without discrimination, but left the matter to the discretion of the local authorities. This was an unobjectionable method of legislation.

See Field *v.* Clark, 143 U. S. 649, 693, 694.

The order of the board of health, pursuant to the statute, was not an undiscriminating rule that every inhabitant of the city must get himself vaccinated before a certain time, notwithstanding his condition of health, which might be such that to undergo vaccination would be dangerous, but was in the nature of a resolve that all who had not been successfully vaccinated since March 1, 1897, ought to be vaccinated. Without further steps on the part of the board, no person would be liable to a penalty, because there was, as yet, no definite requirement with which any person could refuse or neglect to comply; as yet there was no possible denial of rights secured by the Federal Constitution.

Then the board of health required the plaintiff in error to be vaccinated, offering to vaccinate him free of expense, but he arbitrarily refused. In this actual administration of the power conferred by the statute, nothing unconstitutional is shown.

V.

Since the statute authorizing vaccination, the order of the board of health in conformity with the statute and the discretionary administration of the order, so far as appears, were all free from arbitrary or unequal operation, the judgment of the superior court of Massachusetts ought to be affirmed.

HERBERT PARKER,
Attorney-General of Massachusetts.

FREDERICK H. NASH,
Assistant Attorney-General of Massachusetts.

Supreme Court of the United States.

No. 70.—October Term, 1904.

Henning Jacobson, Plaintiff in Error, vs. The Commonwealth of Massachusetts. } In error to the Supreme Court of the State of Massachusetts.

[February 20th 1905.]

Mr. Justice Harlan delivered the opinion of the Court.

This case involves the validity, under the Constitution of the United States, of certain provisions in the statutes of Massachusetts relating to vaccination.

The Revised Laws of that Commonwealth, c. 75, § 137, provide that "the Board of Health of a city or town if, in its opinion, it is necessary for the public health or safety, shall require and enforce the vaccination of all the inhabitants thereof and shall, provide them with the means of free vaccination. Whoever, being over twenty-one years of age and not under guardianship, refuses or neglects to comply with such requirement shall forfeit five dollars."

An exception is made in favor of "children who present a certificate, signed by a registered physician that they are unfit subjects for vaccination." § 139.

Proceeding under the above statutes, the Board of Health of the city of Cambridge, Massachusetts, on the 27th day of February 1902, adopted the following regulation: "Whereas, smallpox has been prevalent to some extent in the city of Cambridge and still continues to increase; and whereas, it is necessary for the speedy extermination of the disease, that all persons not protected by vaccination should be vaccinated; and whereas, in the opinion of the board, the public health and safety require the vaccination or revaccination of all the inhabitants of Cambridge; be it ordered, that all the inhabitants of the city who have not been successfully vaccinated since March 1st 1897 be vaccinated or revaccinated."

Subsequently, the Board adopted an additional regulation empowering a named physician to enforce the vaccination of persons as directed by the Board at its special meeting of February 27th.

The above regulations being in force, the plaintiff in error, Jacobson, was proceeded against by a criminal complaint in one of the inferior courts of Massachusetts. The complaint charged that on the 17th day of July 1902 the Board of Health of Cambridge, being of the opinion that it was

necessary for the public health and safety, required the vaccination and revaccination of all the inhabitants thereof who had not been successfully vaccinated since the first day of March 1897, and provided them with the means of free vaccination, and that the defendant, being over twenty-one years of age and not under guardianship, refused and neglected to comply with such requirement.

The defendant, having been arraigned, pleaded not guilty. The Government put in evidence the above regulations adopted by the Board of Health and made proof tending to show that its cha rman informed the defendant that by refusing to be vaccinated he would incur the penalty provided by the statute, and would be prosecuted therefor; that he offered to vaccinate the defendant without expense to him; and that the offer was declined and defendant refused to be vaccinated.

The prosecution having introduced no other evidence, the defendant made numerous offers of proof. But the trial court ruled that each and all of the facts offered to be proved by the defendant were immaterial, and excluded all proof of them.

The defendant, standing upon his offers of proof, and introducing no evidence, asked numerous instructions to the jury, among which were the following:

That section 137 of chapter 75 of the Revised Laws of Massachusetts was in derogation of the rights secured to the defendant by the Preamble to the Constitution of the United States, and tended to subvert and defeat the purposes of the Constitution as declared in its Preamble;

That the section referred to was in derogation of the rights secured to the defendant by the Fourteenth Amendment of the Constitution of the United States, and especially of the clauses of that amendment providing that no State shall make or enforce any law abridging the privileges or immunities of citizens of the United States, nor deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws; and

That said section was opposed to the Spirit of the Constitution.

Each of the defendant's prayers for instructions was rejected, and he duly excepted. The defendant requested the court, but the court refused, to instruct the jury to return a verdict of not guilty. And the court instructed the jury in substance that if they believed the evidence introduced by the Commonwealth and were satisfied beyond a reasonable doubt that the defendant was guilty of the offense charged in the complaint, they would be warranted in finding a verdict of guilty. A verdict of guilty was thereupon returned.

The case was then continued for the opinion of the Supreme Judicial Court of Massachusetts. That court overruled all the defendant's excep-

tions, sustained the action of the trial court, and thereafter, pursuant to the verdict of the jury, he was sentenced by the court to pay a fine of five dollars. And the court ordered that he stand committed until the fine was paid.

We pass without extended discussion the suggestion that the particular section of the statute of Massachusetts now in question (§ 137, c. 75) is in derogation of rights secured by the Preamble of the Constitution of the United States. Although that Preamble indicates the general purposes for which the People ordained and established the Constitution, it has never been regarded as the source of any substantive power conferred on the Government of the United States or on any of its Departments. Such powers embrace only those expressly granted in the body of the Constitution and such as may be implied from those so granted. Although, therefore, one of the declared objects of the Constitution was to secure the blessings of liberty to all under the sovereign jurisdiction and authority of the United States, no power can be exerted to that end by the United States unless, apart from the Preamble, it be found in some express delegation of power or in some power to be properly implied therefrom. 1 *Story's Const.* § 462.

We also pass without discussion the suggestion that the above section of the statute is opposed to the Spirit of the Constitution. Undoubtedly, as observed by Chief Justice Marshall, speaking for the court in *Sturgess* v. *Crowingshield*, 4 *Wheat.* 122, 202, "the spirit of an instrument, especially of a constitution, is to be respected not less than its letter; yet the spirit is to be collected chiefly from its words." We have no need in this case to go beyond the plain, obvious meaning of the words in those provisions of the Constitution which, it is contended, must control our decision.

What, according to the judgment of the State court, is the scope and effect of the statute? What results were intended to be accomplished by it? These questions must be answered.

The Supreme Judicial Court of Massachusetts said in the present case: "Let us consider the offer of evidence which was made by the defendant Jacobson. The ninth of the propositions which he offered to prove, as to what vaccination consists of, is nothing more than a fact of common knowledge, upon which the statute is founded, and proof of it was unnecessary and immaterial. The thirteenth and fourteenth involved matters depending upon his personal opinion, which could not be taken as correct, or given effect, merely because he made it a ground of refusal to comply with the requirement. Moreover, his views could not affect the validity of the statute, nor entitle him to be excepted from its provisions. *Commonwealth* v. *Connolly*, 163 *Mass.* 539; *Commonwealth* v. *Has*, 122 *Mass.* 40; *Reynolds* v. *United States*, 98 *U. S.* 145; *Regina* v. *Downes*, 13 *Cox C. C.* 111. The other eleven propositions all relate to

alleged injurious or dangerous effects of vaccination. The defendant 'offered to prove and show by competent evidence' these so-called facts. Each of them, in its nature, is such that it cannot be stated as a truth, otherwise than as a matter of opinion. The only 'competent evidence' that could be presented to the court to prove these propositions was the testimony of experts, giving their opinions. It would not have been competent to introduce the medical history of individual cases. Assuming that medical experts could have been found who would have testified in support of these propositions, and that it had become the duty of the judge, in accordance with the law as stated in *Commonwealth* v. *Anthes*, 5 *Gray*, 185, to instruct the jury as to whether or not the statute is constitutional, he would have been obliged to consider the evidence in connection with facts of common knowledge, which the court will always regard in passing upon the constitutionality of a statute. He would have considered this testmony of experts in connection with the facts that for nearly a century most of the members of the medical profession have regarded vaccination, repeated at intervals, as a preventive of smallpox; that while they have recognized the possibility of injury to an individual from carelessness in the performance of it, or even in a conceivable case without carelessness, they generally have considered the risk of such an injury too small to be seriously weighed as against the benefits coming from the discreet and proper use of the preventive; and that not only the medical profession and the people generally have for a long time entertained these opinions, but legislatures and courts have acted upon them with general unanimity. If the defendant had been permitted to introduce such expert testimony as he had in support of these several propositions, it could not have changed the result. It would not have justified the court in holding that the Legislature had transcended its power in enacting this statute on their judgment of what the welfare of the people demands." *Com'th* v. *Jacobson*, 183 *Mass.* 242.

While the mere rejection of defendant's offers of proof does not strictly present a Federal question, we may properly regard the exclusion of evidence upon the ground of its incompetentency or immateriality under the statute as showing what, in the opinion of the State court, is the scope and meaning of the statute. Taking the above observations of the State court as indicating the scope of the statute—and such is our duty, *Leffingwell* v. *Warren*, 2 *Black*, 599, 603, *Morley* v. *Lake Shore Railway Co.*, 146 *U. S.* 162, 167, *Tullis* v. *L. E. & W. R. R. Co.*, 175 *U. S.* 348, *W. W. Cargill Co.* v. *Minnesota*, 180 *U. S.* 452, 466—we assume for the purposes of the present inquiry that its provisions require, at least as a general rule, that adults not under guardianship and remaining within the limits of the city of Cambridge must submit to the regulation adopted by the Board of Health. Is the statute, so construed, therefore, inconsistent with the liberty

which the Constitution of the United States secures to every person against deprivation by the State?

The authority of the State to enact this statute is to be referred to what is commonly called the police power—a power which the State did not surrender when becoming a member of the Union under the Constitution. Although this court has refrained from any attempt to define the limits of that power, yet it has distinctly recognized the authority of a State to enact quarantine laws and "health laws of every description"; indeed, all laws that relate to matters completely within its territory and which do not by their necessary operation affect the people of other States. According to settled principles the police power of a State must be held to embrace, at least, such reasonable regulations established directly by legislative enactment as will protect the public health and the public safety. *Gibbons* v. *Ogden*, 9 *Wheat.* 1, 203; *Railroad Company* v. *Husen*, 95 *U. S.* 465, 470; *Beer Company* v. *Massachusetts*, 97 *U. S.* 25; *New Orleans Gas Co.* v. *Louisiana Light Co.*, 115 *U. S.* 650, 661; *Lawson* v. *Steele*, 152 *U. S.* 133. It is equally true that the State may invest local bodies called into existence for purposes of local administration with authority in some appropriate way to safeguard the public health and the public safety. The mode or manner in which those results are to be accomplished is within the discretion of the State, subject, of course, so far as Federal power is concerned, only to the condition that no rule prescribed by a State, nor any regulation adopted by a local governmental agency acting under the sanction of State legislation, shall contravene the Constitution of the United States nor infringe any right granted or secured by that instrument. A local enactment or regulation, even if based on the acknowledged police powers of a State, must always yield in case of conflict with the exercise by the General Government of any power it possesses under the Constitution, or with any right which that instrument gives or secures. *Gibbons* v. *Gibbons*, 9 *Wheat.* 1, 210; *Sinnot* v. *Davenport*, 22 *How.* 227, 243; *M. K. & T. Rw. Co.* v. *Haber*, 169 *U. S.* 613, 626.

We come, then, to inquire whether any right given, or secured by the Constitution, is invaded by the statute as interpreted by the State court. The defendant insists that his liberty is invaded when the State subjects him to fine or imprisonment for neglecting or refusing to submit to vaccination; that a compulsory vaccination law is unreasonable, arbitrary and oppressive, and, therefore, hostile to the inherent right of every freeman to care for his own body and health in such way as to him seems best; and that the execution of such a law against one who objects to vaccination, no matter for what reason, is nothing short of an assault upon his person. But the liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an absolute right in each person to be, at all times and in all circum-

stances, wholly freed from restraint. There are manifold restraints to which every person is necessarily subject for the common good. On any other basis organized society could not exist with safety to its members. Society based on the rule that each one is a law unto himself would soon be confronted with disorder and anarchy. Real liberty for all could not exist under the operation of a principle which recognizes the right of each individual person to use his own, whether in respect of his person or his property, regardless of the injury that may be done to others. This court has more than once recognized it as a fundamental principle that "persons and property are subjected to all kinds of restraints and burdens, in order to secure the general comfort, health, and prosperity of the State; of the perfect right of the legislature to do which no question ever was, or upon acknowledged general principles ever can be made, so far as natural persons are concerned." *Railroad Co.* v. *Husen*, 95 *U. S.* 465, 471; *Missouri, Kansas & Texas Ry. Co.* v. *Haber*, 169 *U. S.* 613, 628–9; *Thorp* v. *Rutland & Burlington R. R.*, 27 *Vt.* 148. In *Crowley* v. *Christensen*, 137 *U. S.* 86, 89, we said: "The possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, good order and morals of the community. Even liberty itself, the greatest of all rights, is not unrestricted license to act according to one's own will. It is only freedom from restraint under conditions essential to the equal enjoyment of the same right by others. It is then liberty regulated by law." *Crowley* v. *Christensen*, 137 *U. S.* 86, 89. In the Constitution of Massachusetts adopted in 1780 it was laid down as a fundamental principle of the social compact that the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for "the common good," and that government is instituted "for the common good, for the protection, safety, prosperity and happiness of the people, and not for the profit, honor or private interests of any one man, family or class of men." The good and welfare of the Commonwealth, of which the Legislature is primarily the judge, is the basis on which the police power rests in Massachusetts. *Com'th* v. *Alger*, 7 *Cush.* 84.

Applying these principles to the present case, it is to be observed that the Legislature of Massachusetts required the inhabitants of a city or town to be vaccinated only when, in the opinion of the Board of Health, that was necessary for the public health or the public safety. The authority to determine for all what ought to be done in such an emergency must have been lodged somewhere or in some body; and surely it was appropriate for the Legislature to refer that question, in the first instance, to a Board of Health, composed of persons residing in the locality affected and appointed, presumably, because of their fitness to determine such questions.

To invest such a body with authority over such matters was not an unusual nor an unreasonable or arbitrary requirement. Upon the principle of self-defense, of paramount necessity, a community has the right to protect itself against an epidemic of disease which threatens the safety of its members. It is to be observed that when the regulation in question was adopted, smallpox, according to the recitals in the regulation adopted by the Board of Health, was prevalent to some extent in the city of Cambridge and the disease was increasing. If such was the situation—and nothing is asserted or appears in the record to the contrary—if we are to attach any value whatever to the knowledge which, it is safe to affirm, is common to all civilized peoples touching smallpox and the methods most usually employed to eradicate that disease, it cannot be adjudged that the present regulation of the Board of Health was not necessary in order to protect the public health and secure the public safety. Smallpox being prevalent and increasing at Cambridge, the court would usurp the functions of another branch of government if it adjudged, as matter of law, that the mode adopted under the sanction of the State, to protect the people at large was arbitrary and not justified by the necessities of the case. We say necessities of the case, because it might be that an acknowledged power of a local community to protect itself against an epidemic threatening the safety of all, might be exercised in particular circumstances and in reference to particular persons in such an arbitrary, unreasonable manner, or might go so far beyond what was reasonably required for the safety of the public, as to authorize or compel the courts to interfere for the protection of such persons. *Wisconsin &c. R. R. Co.* v. *Jacobson*, 179 *U. S.* 287, 301; 1 *Dillon Mun. Corp. 4th Ed.* §§ 319 *to* 325, *and authorities in notes; Freund's Police Power*, § 63 *et seq.* In *Railroad Company* v. *Husen*, 95 *U. S.* 465, 471–3, this court recognized the right of a State to pass sanitary laws, laws for the protection of life, liberty health or property within its limits, laws to prevent persons and animals suffering under contagious or infectious diseases, or convicts, from coming within its borders. But as the laws there involved went beyond the necessity of the case and under the guise of exerting a police power invaded the domain of Federal authority and violated rights secured by the Constitution, this court deemed it to be its duty to hold such laws invalid. If the mode adopted by the Commonwealth of Massachusetts for the protection of its local communities against smallpox proved to be distressing, inconvenient or objectionable to some—if nothing more could be reasonably affirmed of the statute in question—the answer is that it was the duty of the constituted authorities primarily to keep in view the welfare, comfort and safety of the many, and not permit the interests of the many to be subordinated to the wishes or convenience of the few. There is, of course, a sphere within which the individual may assert the supremacy of his own will and rightfully dispute the authority of any human government, especially of any free government existing under

a written constitution, to interfere with the exercise of that will. But it is equally true that in every well-ordered society charged with the duty of conserving the safety of its members the rights of the individual in respect of his liberty may at times, under the pressure of great dangers, be subjected to such restraint, to be enforced by reasonable regulations, as the safety of the general public may demand. An American citizen, arriving at an American port on a vessel in which, during the voyage, there had been cases of yellow fever or Asiatic cholera, he, although apparently free from disease himself, may yet, in some circumstances, be held in quarantine against his will on board of such vessel or in a quarantine station, until it be ascertained by inspection, conducted with due diligence, that the danger of the spread of the disease among the community at large has disappeared. The liberty secured by the Fourteenth Amendment, this court has said, consists, in part, in the right of a person "to live and work where he will," *Allgeyer* v. *Louisiana*, 165 *U. S.* 578; and yet he may be compelled, by force if need be, against his will and without regard to his personal wishes or his pecuniary interests, or even his religious or political convictions, to take his place in the ranks of the army of his country and risk the chance of being shot down in its defense. It is not, therefore, true that the power of the public to guard itself against imminent danger depends in every case involving the control of one's body upon his willingness to submit to reasonable regulations established by the constituted authorities, under the sanction of the State, for the purpose of protecting the public collectively against such danger.

It is said, however, that the statute, as interpreted by the State court, although making an exception in favor of children certified by a registered physician to be unfit subjects for vaccination, makes no exception in the case of adults in like condition. But this cannot be deemed a denial of the equal protection of the laws to adults; for the statute is applicable equally to all in like condition and there are obviously reasons why regulations may be appropriate for adults which could not be safely applied to persons of tender years.

Looking at the propositions embodied in the defendant's rejected offers of proof it is clear that they are more formidable by their number than by their inherent value. Those offers in the main seem to have had no purpose except to state the general theory of those of the medical profession who attach little or no value to vaccination as a means of preventing the spread of smallpox or who think that vaccination causes other diseases of the body. What everybody knows the court must know, and therefore the State court judicially knew, as this court knows, that an opposite theory accords with the common belief and is maintained by high medical authority. We must assume that when the statute in question was passed, the Legislature of Massachusetts was not unaware of these opposing theories, and was compelled, of

necessity, to choose between them. It was not compelled to commit a matter involving the public health and safety to the final decision of a court or jury. It is no part of the function of a court or a jury to determine which one of two modes was likely to be the most effective for the protection of the public against disease. That was for the legislative department to determine in the light of all the information it had or could obtain. It could not properly abdicate its function to guard the public health and safety. The State Legislature proceeded upon the theory which recognized vaccination as at least an effective if not the best known way in which to meet and suppress the evils of a smallpox epidemic that imperilled an entire population. Upon what sound principles as to the relations existing between the different departments of government can the court review this action of the Legislature? If there is any such power in the judiciary to review legislative action in respect of a matter affecting the general welfare, it can only be when that which the Legislature has done comes within the rule that if a statute purporting to have been enacted to protect the public health, the public morals or the public safety, has no real or substantial relation to those objects, or is, beyond all question, a plain, palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution." *Mugler* v. *Kansas*, 123 *U. S.* 623, 661; *Minnesota* v. *Barber*, 136 *U. S.* 313, 320; *Atkin* v. *Kansas*, 191 U. S. 207, 223.

Whatever may be thought of the expediency of this statute, it cannot be affirmed to be, beyond question, in palpable conflict with the Constitution. Nor, in view of the methods employed to stamp out the disease of smallpox, can any one confidently assert that the means prescribed by the State to that end has no real or substantial relation to the protection of the public health and the public safety. Such an assertion would not be consistent with the experience of this and other countries whose authorities have dealt with the disease of smallpox.* And the principle of vaccination as

* "State-supported facilities for vaccination began in England in 1808 with the National Vaccine Establishment. In 1840 vaccination fees were made payable out of the rates. The first compulsory act was passed in 1853, the guardians of the poor being entrusted with the carrying out of the law; in 1854 the public vaccinations under one year of age were 408,825 as against an average of 180,960 for several years before. In 1867 a new Act was passed, rather to remove some technical difficulties than to enlarge the scope of the former Act; and in 1871 the Act was passed which compelled the boards of guardians to appoint vaccination officers. The guardians also appoint a public vaccinator, who must be duly qualified to practice medicine, and whose duty it is to vaccinate (for a fee of one shilling and sixpence) any child resident within his district brought to him for that purpose, to examine the same a week after, to give a certificate, and to certify to the vaccination officer the fact of vaccination or of insusceptibility. . . Vaccination was made compulsory in Bavaria in 1807, and subsequently in the following countries: Denmark (1810),

a means to prevent the spread of smallpox has been enforced in many States by statutes making the vaccination of children a condition of their right to enter or remain in public schools. *Blue* v. *Beach*, 155 *Ind.* 121; *Morris* v. *City of Columbus*, 102 *Ga.* 792; *State* v. *Hay*, 126 *N. C.* 999; *Abeel* v. *Clark*, 84 *Cal.* 226; *Bissell* v. *Davidson*, 65 *Conn.* 183; *Hazen* v. *Strong*, 2 *Vt.* 427; *Duffield* v. *Williamsport School District*, 162 *Pa. St.* 476.

The latest case upon the subject of which we are aware is *Viemester* v. *White, President, &c.*, decided very recently by the Court of Appeals of New York, and the opinion in which has not yet appeared in the regular reports. That case involved the validity of a statute excluding from the public schools all children who had not been vaccinated. One contention was that the statute and the regulation adopted in exercise of its provisions was inconsistent with the rights, privileges and liberties of the citizen. The contention was overruled, the court saying, among other things: "Smallpox is known of all to be a dangerous and contagious disease. If vaccination strongly tends to prevent the transmission or spread of this disease, it logically follows that children may be refused admission to the public schools until they have been vaccinated. The appellant

---

Sweden (1814), Würtemburg, Hesse, and other German states (1818), Prussia (1835), Roumania (1874), Hungary (1876), and Servia (1881). It is compulsory by cantonal law in ten out of the twenty-two Swiss cantons; an attempt to pass a federal compulsory law was defeated by a plebiscite in 1881. In the following countries there is no compulsory law, but Government facilities and compulsion on various classes more or less directly under Government control, such as soldiers, state employés, apprentices, school pupils, etc.: France, Italy, Spain, Portugal, Belgium, Norway, Austria, Turkey. . . Vaccination has been compulsory in South Australia since 1872, in Victoria since 1874, and in Western Australia since 1878. In Tasmania a compulsory Act was passed in 1882. In New South Wales there is no compulsion, but free facilities for vaccination. Compulsion was adopted at Calcutta in 1880, and since then at eighty other towns of Bengal, at Madras in 1884, and at Bombay and elsewhere in the presidency a few years earlier. Revaccination was made compulsory in Denmark in 1871, and in Roumania in 1874; in Holland it was enacted for all school pupils in 1872. The various laws and administrative orders which had been for many years in force as to vaccination and revaccination in the several German states were consolidated in an imperial statute of 1874." 24 *Encyclopædia Britannica*, (1894,) *Vaccination.*

"In 1857 the British Parliament received answers from 552 physicians to questions which were asked them in reference to the utility of vaccination, and only two of these spoke against it. Nothing proves this utility more clearly than the statistics obtained. Especially instructive are those which Flinzer compiled respecting the epidemic in Chemitz which prevailed in 1870–71. At this time in the town there were 64,255 inhabitants, of whom 53,891, or 83.87 per cent., were vaccinated, 5,712, or 8.89 per cent. were unvaccinated, and 4,652, or 7.24 per cent., had had the smallpox before. Of those vaccinated 953,

claims that vaccination does not tend to prevent smallpox, but tends to bring about other diseases, and that it does much harm, with no good. It must be conceded that some laymen, both learned and unlearned, and some physicians of great skill and repute, do not believe that vaccination is a preventive of smallpox. The common belief, however, is that it has a decided tendency to prevent the spread of this fearful disease and to render it less dangerous to those who contract it. While not accepted by all, it is accepted by the mass of the people, as well as by most members of the medical profession. It has been general in our State and in most civilized nations for generations. It is generally accepted in theory, and generally applied in practice, both by the voluntary action of the people and in obedience to the command of law. Nearly every State in the Union has statutes to encourage or directly or indirectly to require vaccination, and this is true of most nations of Europe. . . A common belief, like common knowledge, does not require evidence to establish its existence, but may be acted upon without proof by the Legislature and the courts. . . The fact that the belief is not universal is not controlling, for there is

---

or 1.77 per cent., became affected with smallpox, and of the uninocculated 2,643, or 46.3 per cent., had the disease. In the vaccinated the mortality from the disease was 0.73 per cent., and in the unprotected it was 9.16 per cent. In general, the danger of infection is six times as great, and the mortality 68 times as great, in the unvaccinated as in the vaccinated. Statistics derived from the civil population are in general not so instructive as those derived from armies, where vaccination is usually more carefully performed and where statistics can be more accurately collected. During the Franco-German war (1870–71) there was in France a widespread epidemic of smallpox, but the German army lost during the campaign only 450 cases, or 58 men to the 100,000; in the French army, however, where vaccination was not carefully carried out, the number of deaths from smallpox was 23,400." 8 *Johnson's Universal Cyclopædia*, (1897,) *Vaccination.*

"The degree of protection afforded by vaccination thus became a question of great interest. Its extreme value was easily demonstrated by statistical researches. In England, in the last half of the eighteenth century, out of every 1,000 deaths, 96 occurred from smallpox ; in the first half of the present century, out of every 1,000 deaths, but 35 were caused by that disease, The amount of mortality in a country by smallpox seems to bear a fixed relation to the extent to which vaccination is carried out. In all England and Wales, for some years previous to 1853, the proportional mortality by smallpox was 21.9 to 1,000 deaths from causes; in London it was but 16 to 1,000; in Ireland, where vaccination was much less general, it was 49 to 1,000, while in Connaught it was 60 to 1,000. On the other hand, in a number of European countries where vaccination was more or less compulsory, the proportionate number of deaths from smallpox about the same time varied from 2 per 1,000 of causes in Bohemia, Lombardy, Venice, and Sweden, to 8.33 per 1,000 in Saxony. Although in many instances persons who had been vaccinated were attacked with smallpox

scarcely any belief that is accepted by everyone. The possibility that the belief may be wrong, and that science may yet show it to be wrong, is not conclusive; for the Legislature has the right to pass laws which, according to the common belief of the people, are adapted to prevent the spread of contagious diseases. In a free country, where the government is by the people, through their chosen representatives, practical legislation admits of no other standard of action; for what the people believe is for the common welfare must be accepted as tending to promote the common welfare, whether it does in fact or not. Any other basis would conflict with the spirit of the Constitution, and would sanction measures opposed to a republican form of government. While we do not decide and cannot decide that vaccination is a preventive of smallpox, we take judicial notice of the fact that this is the common belief of the people of the State, and with this fact as a foundation we hold that the statute in question is a health law, enacted in a reasonable and proper exercise of the police power." 72 *N. E.* 97.

---

in a more or less modified form, it was noticed that the persons so attacked had been commonly vaccinated many years previously. 16 *American Cyclopedia, Vaccination,* (1883.)

"Dr. Buchanan, the medical officer of the London Goverment Board, reported [1881] as the result of statistics that the smallpox death rate among adult persons vaccinated was 90 to a million; whereas among those unvaccinated it was 3,350 to a million; whereas among vaccinated children under 5 years of age, 42½ per million; whereas among vaccinated children of the same age it was 5,950 per million." *Hardway's Essentials of Vaccination* (1882). The same author reports that among other conclusions reached by the Académie de Médicine of France, was one that "without vaccination, hygienic measures (isolation, disinfection, etc.) are of themselves insufficient for preservation from smallpox." *Ib.*

The Belgian Academy of Medicine appointed a committee to make an exhaustive examination of the whole subject, and among the conclusions reported by them were: 1. "Without vaccination, hygienic measures and means, whether public or private, are powerless in preserving mankind from smallpox. . . 3. Vaccination is always an inoffensive operation when practiced with proper care on healthy subjects. . . 4. It is highly desirable, in the interests of the health and lives of our countrymen, that vaccination should be rendered compulsory." *Edwards' Vaccination* (1882).

The English Royal Commission, appointed with Lord Herschell, the Lord Chancellor of England, at its head, to inquire, among other things, as to the effect of vaccination in reducing the prevalence of, and mortality from, smallpox, reported, after several years of investigation: "We think that it diminishes the liability to be attacked by the disease; that it modifies the character of the disease and renders it less fatal, of a milder and less severe type; that the protection it affords against attacks of the disease is greatest during the years immediately succeeding the operation of vaccination."

Since then vaccination, as a means of protecting a community against smallpox, finds strong support in the experience of this and other countries, no court, much less a jury, is justified in disregarding the action of the Legislature simply because in its or their opinion that particular method was—perhaps or possibly—not the best either for children or adults.

Did the offers of proof made by the defendant present a case which entitled him, while remaining in Cambridge, to claim exemption from the operation of the statute and of the regulation adopted by the Board of Health? We have already said that his rejected offers, in the main, only set forth the theory of those who had no faith in vaccination as a means of preventing the spread of smallpox, or who thought that vaccination, without benefiting the public, put in peril the health of the person vaccinated. But there were some offers which it is contended embodied distinct facts that might properly have been considered. Let us see how this is.

The defendant offered to prove that vaccination "quite often" caused serious and permanent injury to the health of the person vaccinated; that the operation "occasionally" resulted in death; that it was "impossible" to tell "in any particular case" what the results of vaccination would be or whether it would injure the health or result in death; that "quite often" one's blood is in a certain condition of impurity when it is not prudent or safe to vaccinate him; that there is no practical test by which to determine "with any degree of certainty" whether one's blood is in such condition of impurity as to render vaccination necessarily unsafe or dangerous; that vaccine matter is "quite often" impure and dangerous to be used, but whether impure or not cannot be ascertained by any known practical test; that the defendant refused to submit to vaccination for the reason that he had, "when a child," been caused great and extreme suffering for a long period by a disease produced by vaccination; and that he had witnessed a similar result of vaccination not only in the case of his son, but in the cases of others.

These offers, in effect, invited the court and jury to go over the whole ground gone over by the Legislature when it enacted the statute in question. The Legislature assumed that some children, by reason of their condition at the time, might not be fit subjects of vaccination; and it is suggested—and we will not say without reason—that such is the case with some adults. But the defendant did not offer to prove that, by reason of his then condition, he was in fact not a fit subject of vaccination at the time he was informed of the requirement of the regulation adopted by the Board of Health. It is entirely consistent with his offer of proof that, after reaching full age he had become, so far as medical skill could discover, and when informed of the regulation of the Board of Health was, a fit subject of vaccination, and that the vaccine matter to be used in his case was such as any

medical practitioner of good standing would regard as proper to be used. The matured opinions of medical men everywhere, and the experience of mankind, as all must know, negative, the suggestion that it is not possible in any case to determine whether vaccination is safe. Was defendant exempted from the operation of the statute simply because of his dread of the same evil results experienced by him when a child and had observed in the cases of his son and other children? Could he reasonably claim such an exemption because "quite often" or "occasionally" injury had resulted from vaccination, or because it was impossible, in the opinion of some, by any practical test, to determine with absolute certainty whether a particular person could be safely vaccinated?

It seems to the court that an affirmative answer to these questions would practically strip the legislative department of its function to care for the public health and the public safety when endangered by epidemics of disease. Such an answer would mean that compulsory vaccination could not, in any conceivable case, be legally enforced in a community, even at the command of the Legislature, however widespread the epidemic of smallpox, and however deep and universal was the belief of the community and of its medical advisers, that a system of general vaccination was vital to the safety of all.

We are not prepared to hold that a minority, residing or remaining in any city or town where smallpox is prevalent, and enjoying the general protection afforded by an organized local government, may thus defy the will of its constituted authorities, acting in good faith for all, under the legislative sanction of the State. If such be the privilege of a minority then a like privilege would belong to each individual of the community, and the spectacle would be presented of the welfare and safety of an entire population being subordinated to the notions of a single individual who chooses to remain a part of that population. We are unwilling to hold it to be an element in the liberty secured by the Constitution of the United States that one person, or a minority of persons, residing in any community and enjoying the benefits of its local government, should have the power thus to dominate the majority when supported in their action by the authority of the State. While this court should guard with firmness every right appertaining to life, liberty or property as secured to the individual by the Supreme Law of the Land, it is of the last importance that it should not invade the domain of local authority except when it is plainly necessary to do so in order to enforce that law. The safety and the health of the people of Massachusetts are, in the first instance, for that Commonwealth to guard and protect. They are matters that do not ordinarily concern the National Government. So far as they can be reached by any government, they depend, primarily, upon such action as the State in its wisdom may take; and we do not perceive that

this legislation has invaded any right secured by the Federal Constitution.

Before closing this opinion we deem it appropriate, in order to prevent misapprehension as to our views, to observe—perhaps to repeat a thought already sufficiently expressed, namely—that the police power of a State, whether exercised directly by the Legislature, or by a local body acting under its authority, may be exerted in such circumstances or by regulations so arbitrary and oppressive in particular cases as to justify the interference of the courts to prevent wrong and oppression. Extreme cases can be readily suggested. Ordinarily such cases are not safe guides in the administration of the law. It is easy, for instance, to suppose the case of an adult who is embraced by the mere words of the act, but yet to subject whom to vaccination in a particular condition of his health or body, would be cruel and inhuman in the last degree. We are not to be understood as holding that the statute was intended to be applied to such a case, or, if it was so intended, that the judiciary would not be competent to interfere and protect the health and life of the individual concerned. "All laws," this court has said, "should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression or absurd consequence. It will always, therefore, be presumed that the Legislature intended exceptions to its language which would avoid results of that character. The reason of the law in such cases should prevail over its letter." *United States* v. *Kirby*, 7 *Wall.* 482; *Lau Ow Bew* v. *United States*, 144 *U. S.* 47, 58. Until otherwise informed by the highest court of Massachusetts we are not inclined to hold that the statute establishes the absolute rule that an adult must be vaccinated if it be apparent or can be shown with reasonable certainty that he is not at the time a fit subject of vaccination or that vaccination, by reason of his then condition, would seriously impair his health or probably cause his death. No such case is here presented. It is the cause of an adult who, for aught that appears, was himself in perfect health and a fit subject of vaccination, and yet, while remaining in the community, refused to obey the statute and the regulation adopted in execution of its provisions for the protection of the public health and the public safety, confessedly endangered by the presence of a dangerous disease.

We now decide only that the statute covers the present case, and that nothing clearly appears that would justify this court in holding it to be unconstitutional and inoperative in its application to the plaintiff in error.

The judgment of the court below must be affirmed.

It is so ordered.

Mr. Justice BREWER and Mr. Justice PECKHAM dissent.